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9:00 a.m.–Noon

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. AMS–FV–06–0214; FV07–959–1 IFR]

Onions Grown in South Texas; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the regulatory period for minimum grade, size, quality, and maturity requirements applicable to onions grown in South Texas under Marketing Order No. 959 (order). The current regulatory period for South Texas onions is March 1 through June 4 of each year. Changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. The new regulatory period will extend through July 15. The South Texas Onion Committee (Committee), which locally administers the order, unanimously recommended the change.

DATES: Effective May 8, 2007. Comments received by July 6, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; 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 available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

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@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both 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.''

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

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

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

This action, which was unanimously recommended by the Committee, extends the regulatory period when minimum grade, size, quality, and maturity requirements apply to onions grown under the order in South Texas.

Under the terms of the order, fresh market shipments of onions grown in a 35-county production area in South Texas are currently subject to handling regulations during the period March 1 through June 4 of each year. According to the Committee, changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. Because the current regulatory period does not cover the present production season completely, not all onion shipments occurring after June 4 are currently subject to order requirements.

According to USDA Market News data, 40 percent of South Texas onions shipped in 2005 from District 2, or roughly 11 percent of total shipments for the production area, occurred after June 4. In 2006, 30 percent of onions shipped from District 2, or approximately 10 percent of total shipments for the production area, were shipped after June 4.

Section 959.110 of the order's rules and regulations apportions the 35 counties between two onion-growing areas known as District 1, designated as the Coastal Bend-Lower Valley area, and District 2, designated as the Laredo-Winter Garden area. District 1 is comprised of the counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy. District 2 includes the counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

Section 959.52(b) of the order provides authority to limit the handling of any grade, size, quality, maturity, or pack of onions within the production area during any period. Section 959.322 outlines the regulatory requirements authorized under § 959.52(b). Such

grade requirements are based on the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR part 51.3195–3212), or the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types) (7 CFR part 51.2830–2854).

Currently, these handling regulations provide that shipments may not exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance is permitted in individual packages in percentage grade lots. Applications of tolerances in U.S. onion standards apply to in-grade lots.

Minimum size requirements for different size designations are outlined in the regulations. Specifically, for white onions only, the minimum diameter is 1 inch to 2¼ inches maximum diameter. For other than white onions, the minimum diameter for repacker onions is 1¾ inches to 3 inches maximum with 60 percent or more 2 inches in diameter or larger, 2 to 3½ inches for medium, 3 inches or larger for jumbo or large onions, and 3¾ inches or larger for colossal.

The regulations further specify that tolerances for size in the U.S. onion standards shall apply except that for repacker and medium sizes, not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified.

The current South Texas regulatory period during which the aforementioned regulations are in effect runs from March 1 through June 4, annually. A final rule published on May 17, 1996 (61 FR 24877), established this regulatory period to promote the orderly marketing of onions.

Extending the end date of the regulatory period from June 4 to July 15 each year will provide the consumer with quality onions for a longer period of time because the entire production area will be regulated throughout its shipping period. Normally, South Texas onion handlers continue to voluntarily request inspection of their onions after June 4 to ensure product quality past the current regulatory period. Because the industry is already voluntarily having their onions inspected, the extension is not expected to negatively impact the industry and this change will align order requirements with present day industry operations.

Collecting assessments for an additional five weeks will provide the Committee with additional assessment revenue. Based on USDA Market News shipment 2005 data, an additional 1,086,600 fifty-pound equivalent cartons would have been assessed if the extended regulatory period had been in effect. At the current assessment rate of $0.02 per carton, this amount would have generated an additional $21,732 in assessment revenue. Similarly, Market News data for 2006 indicates that an additional 863,400 cartons would have been assessed between June 4 and July 15, and would have resulted in $17,268 of additional assessment revenue.

The additional revenue collected as a result of an extended regulatory period in 2007 will allow the Committee to further promote onions and conduct more research projects, making it advantageous to the industry as well as the consumer. All producers will realize a better return for a quality pack through research and market development projects funded by the collection of assessments through July 15.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so 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. Thus, both statutes have small entity orientation and compatibility. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 producers of onions in the production area and approximately 38 handlers subject to regulation under the order.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $l.6 million and $1.12 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 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the $6,500,000 annual receipt threshold. All of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule extends the end date of the order's regulatory period from June 4 to July 15 of each year for Texas onions shipped to the fresh market. This action, which was unanimously recommended by the Committee, extends the regulatory period when minimum grade, size, quality, and maturity requirements apply to onions grown under the order. Authorization to implement such regulations is provided in § 959.52(b) of the order. Regulatory requirements authorized under this section are provided in § 959.322.

This action provides that fresh onion shipments from the entire South Texas onion production area meet all order requirements from March 1 through July 15 of each year. The current regulations require that onions grown in the production area meet order requirements from March 1 through June 4 of each year.

According to the Committee, changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. Because the current regulatory period does not cover the present production season completely, not all onion shipments occurring after June 4 are currently subject to mandatory inspection under the order. Extending the regulatory period will ensure that all South Texas onions would be inspected to order specifications.

Many South Texas onion handlers currently continue to voluntarily request inspection of their onions after June 4 to ensure product quality. Because the industry is already

voluntarily having their onions inspected, the extension is not expected to negatively impact the industry and this change will align order requirements with present day industry operations.

According to USDA Market News data, forty percent of South Texas onions shipped in 2005 from District 2, or roughly 11 percent of total shipments for the production area, occurred after June 4. In 2006, 30 percent of onions shipped from District 2, or approximately 10 percent of total shipments for the production area, were shipped after June 4.

This action is also expected to support Committee promotional and research activities and benefit consumers. The Committee has indicated that collecting assessments for an additional five weeks will provide them with additional assessment revenue.

Based on USDA Market News shipment 2005 data, an additional 1,086,600 fifty-pound equivalent cartons would have been assessed if the extended regulatory period had then been in effect. At the current assessment rate of $0.02 per carton, this amount would have generated an additional $21,732 in assessment revenue. Similarly, Market News data for 2006 indicates that an additional 863,400 cartons would have been assessed between June 4 and July 15, 2006, and would have resulted in $17,268 of additional assessment revenue.

The additional revenue will allow the Committee to further promote onions and conduct more research projects, making it advantageous to the industry as well as the consumer. All producers will realize a better return for a quality pack through research and market development projects funded by the collection of assessments through July 15.

The additional five weeks of assessment collection is not expected to significantly burden South Texas Onion handlers. A burden calculation of the additional assessments that would have been collected in 2006 if the regulatory period had been in effect for that season indicates that the additional assessment payments by handlers would have equaled 0.039 percent of total of 2006 production value [($17,268/$44.2 million) × 100 = 0.039]. Total 2006 revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $l.6 million and $1.12 million, respectively.

Extending the end date of the regulatory period from June 4 to July 15 each year will also provide the consumer with quality onions for a longer period of time because the entire production area will be regulated throughout its shipping period.

One alternative to this action would be to not extend the regulatory period beyond the current end date of June 4. However, the Committee believes that not extending the regulatory period would result in a significant portion of the South Texas onion crop not being consistently regulated.

While most handlers currently extend inspection beyond the June 4 regulatory deadline on a voluntary basis, such inspection is not required. By extending the regulatory period, such inspection would be mandatory. Mandatory inspection will ensure orderly marketing of all South Texas onions since all handlers and product will be required to fulfill the same inspection requirements and product standards under the order for the entire production period. Therefore, USDA determined that the end date of the regulatory period for South Texas onions should be extended from June 4 to July 15.

While this action will impose some additional costs on South Texas onion handlers and producers, the costs are expected to be minimal, and will be offset by the benefits of the action. The Committee believes that this modification will benefit consumers, producers, and handlers. The benefits of this action are not expected to be disproportionately greater or lesser for small entities than for large entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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.

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

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. All Committee meetings are public meetings and all entities, both large and small, are able to express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on the extension of the regulatory period under the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible since the South Texas onion regulatory period began March 1, 2007; (2) the rule will benefit the onion industry by aligning the regulatory period with current production practices; (3) the Committee discussed this issue and unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input at the meeting; and (4) the rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 2. In § 959.322, the introductory text is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending July 15, no handler shall

handle any onions, including onions for peeling, chopping, and slicing, unless they comply with paragraphs (a) through (c) or (d) or (e) of this section.

* * * * *

Dated: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8626 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 070411084–7087–02]

RIN 0694–AD96

Revisions to the Export Administration Regulations Based on the 2006 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final Rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2006 Plenary in Copenhagen, Denmark. The amendments set forth in this rule also include adding a new Export Control Classification Number (ECCN) 7A107 to control three axis magnetic heading sensors designed or modified to be integrated with flight control and navigation systems.

DATES: This rule is effective May 7, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AD96, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694–AD96'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AD96.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AD96)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow in the global marketplace of missile systems capable of delivering weapons of mass destruction.

The MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead; it was expanded in January 1993 to also stem the flow of delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to apply the Regime's export Guidelines and to restrict the export of items contained in the Regime's Annex. The Regime's Guidelines are implemented through the national export control laws and policies of the regime members.

In January 1993, complete rocket systems and unmanned aerial vehicle systems that were capable of a ''range'' equal to or greater than 300 km, regardless of the payload, were added to the MTCR Annex (Category II, Item 19). This was based on concerns by MTCR members that rocket systems and unmanned aerial vehicle systems that were capable of a ''range'' equal to or greater than 300 km, but did not meet the 500 kg ''payload'' parameter from Category I of the MTCR Annex, were a proliferation concern. ''Missiles'' are defined in § 772.1 of the EAR as being '' 'capable of' delivering at least 500 kilograms payload to a range of at least 300 kilometers.''

Prior to publication of this rule, the items controlled in ECCNs 1A102, 1C101, 1C107, 6A108, 6B108, 7A102, 7A103, 9A111 and 9B105 included the defined term ''missile'' meaning they were controlled only when they were '' 'capable of' delivering at least 500 kilograms payload to a range of at least 300 kilometers.'' To accommodate the change made in 1993, the MTCR members decided at the 2006 Plenary to clarify the controls applicable to these ECCNs by making it clear that the items in these ECCNs were controlled when used in systems that were capable of a range of at least 300km, regardless of the payload capacity. Therefore, this rule clarifies the scope of these ECCNs by replacing the defined term ''missile'' with new language controlling rockets, missiles, and unmanned aerial vehicles ''capable of a range of at least 300 km'' to these ECCNs.

Amendments to the Export Administration Regulations

In § 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule amends definitions of the terms ''range'' and ''payload.'' Specifically this rule adds double quotes around the terms ''range'' and ''payload'' in these definitions to signify these are defined terms under the EAR.

The Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) is amended to reflect changes to the MTCR Annex agreed to at the October 2006 Plenary in Copenhagen, Denmark.

Specifically the following ECCNs are amended:

ECCN 1A102 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 6.C.2). Under the new text, the materials in this entry are controlled if they are usable for any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have no impact on BIS licensing activity, because these commodities are controlled by the Department of State under the International Traffic in Arms Regulations (ITAR).

ECCN 1C101 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex

Change Category II: Item 17.A.1). Under the new text, the materials in this entry are controlled if they are usable for any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300km, regardless of the payload capability. This change is expected to have a minimal impact on licensing activity.

ECCN 1C107 paragraph (c) is amended by substituting the defined term ''missile'' with new text to clarify the scope of the entry (MTCR Annex Change Category II: Item 6.C.5). Under the new text, the materials in this entry are controlled if they are for use in missile radomes for any missile capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have a minimal impact on licensing activity.

ECCN 1C107 is further amended by revising paragraph (d) to include additional text which adds reinforced silicon-carbide ceramics composites to the CCL (MTCR Annex Change Category II: Item 6.C.6). This material is being added to the EAR to address a concern raised by MTCR members at the Copenhagen Plenary that there is a proliferation concern in the use of this type of material for re-entry vehicles, nose tips and rocket motor nozzle flaps. BIS recognizes that there are also other commercial and civil uses for this material, but believes that the text is sufficiently focused to minimize the impact on industry. As such, BIS expects this change will have a minimal impact on licensing activity.

ECCN 1C111 paragraph (a)(3) is amended by rewording and adding additional text to clarify the scope and purpose of the entry (MTCR Annex Change Category II: Item 4.C.4.a). This amendment will help to clarify that the oxidizer substances identified in the ECCN are those useable in liquid propellant rocket engines, but allows that the substances themselves could be liquid or solid. This change is expected to have no impact on licensing activity.

ECCN 1C111 is further amended by adding a new paragraph (b)(5) and a technical note (MTCR Annex Change Category II: Item 4.C.5.f) which adds and defines the polymeric substance ''polytetrahydrofuran polyethylene glycol (TPEG)'' to the CCL. This substance is added as a result of its increasing use in MTCR-controlled rocket motors as a propellant binder. TPEG is believed to have minimal commercial use and therefore this change is expected to have a minimal impact on licensing activity.

ECCN 6A108 paragraph (b) is amended by substituting the defined term ''missile'' with new text to clarify the scope of the entry (MTCR Annex Change Category II: Item 12.A.5). Under this new text, the precision tracking systems in this entry are controlled if they are usable for any rocket, missile, or unmanned aerial vehicle capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have a minimal impact on licensing activity.

ECCN 6A108 is further amended by deleting the control parameter of ''0.5 mils'' in paragraph (b)(2)(a) to clarify the control on these range instrumentation radars. The 0.5 mils control parameter was not equivalent to 3 milliradians, and therefore needed to be removed from that paragraph in order to not confuse the public regarding the correct control parameter for that paragraph, which is 3 milliradians. This clarification of the control parameter is expected to have no impact on licensing activity (MTCR Annex Category II: Item 12.A.5).

ECCN 6B108 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 17.B.1). Under the new text, the radar cross section measurement systems in this entry are controlled if they are useable for any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have a minimal impact on licensing activity.

ECCN 7A002 paragraph (a)(2) and ECCN 7A102 are amended by adding technical notes to each of these ECCNs to define the term ''stability'' as it pertains to these MTCR defined gyros controlled on the CCL (MTCR Annex Change Category II: Item 9.A.4 Technical Notes). This amendment is made to bring these entries in line with current industry practice for defining these terms. This change is expected to have no impact on licensing activity.

ECCN 7A102 is further amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 9.A.4). Under the new text, the gyros in this entry are controlled if they are usable in any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have a minimal impact on licensing activity.

ECCN 7A103 paragraphs (b) and (c) are amended by substituting the defined term ''missiles'' with new text to clarify the scope of the entry (MTCR Annex Change Category II: Item 9.A.1). Under the new text, the integrated flight instrument systems and navigation systems in this entry are controlled if they are designed or modified for use in any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have a minimal impact on licensing activity.

ECCN 7A107 is added to control three axis magnetic heading sensors designed or modified to be integrated with flight control and navigation systems (MTCR Annex Change Category II: Item 9.A.8). These three axis magnetic heading sensors are being added to the EAR to address a concern raised by MTCR members at the Copenhagen Plenary that there is a potential proliferation concern in the use of this type of equipment in Unmanned Aerial Vehicle (UAV) systems of concern. To conform with the addition of ECCN 7A107 to the EAR, this rule amends the headings of ECCNs 7D101 and 7E101, to include ECCN 7A107 in these software and technology entries, respectively (MTCR Annex Category II: Items 9.D.1 and 9.E.1). It is anticipated that this addition of one new MT controlled ECCN 7A107 and the conforming changes to ECCNs 7D101 and 7E101 will produce a slight increase in licensing activity.

ECCN 9A101 is amended by deleting the word ''Lightweight'' and the phrase ''usable in 'missiles' '' from the heading text (MTCR Annex Change Category II: Item 3.A.1). This amendment will result in a more focused control on these engines, but this change is expected to have no impact on licensing activity.

ECCN 9A101 is further amended by deleting the unit ''parts and accessories in $ value''. This unit is being removed from this ECCN, because parts and accessories are not controlled by this ECCN entry (MTCR Annex Category II: Item 3.A.1). This amendment is expected to have no impact on licensing activity.

ECCN 9A111 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 3.A.2). Under the new text, the items in this entry are controlled if they are usable for any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300km, regardless of the payload capability. This change is expected to have no impact on BIS licensing activity, because these commodities are controlled by the Department of State under the International Traffic in Arms Regulations (ITAR).

ECCN 9A120 is amended by adding double quotes around the word

''payload'' in Technical Note 1 to identify the word as a defined term in the EAR. This amendment is expected to have no impact on licensing activity.

ECCN 9B105 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 15.B.2). Under the new text, the wind tunnels in this entry are controlled when usable for any rocket, missile, or unmanned aerial vehicle systems capable of a range of at least 300 km, regardless of the payload capability, and their subsystems. This change is expected to have a minimal impact on licensing activity.

ECCN 9B117 paragraph (a) is amended by replacing the control parameter of ''90 kN'' with ''68 kN'' such that the text reads as follows, ''* * *a thrust greater than 68 kN;'' (MTCR Annex Change Category II: Item 15.B.3). This lowering of the test stand thrust capacity threshold is being made to the EAR to address a concern raised by MTCR members at the Copenhagen Plenary that there is a proliferation concern with this type of equipment and its usefulness in MTCR type systems. This change is expected to have a minimal impact on licensing activity.

ECCN 9C110 is amended by placing double quotes around the terms ''specific tensile strength'' and ''specific modulus'' in the heading text (MTCR Annex Change Category II: Item 6.C.1 Technical Notes) to indicate that these are defined terms in the CCL. This amendment will clarify the control text, but is expected to have no impact on licensing activity.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on May 7, 2007, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before June 6, 2007. Any such items not actually exported or reexported before midnight, on June 6, 2007, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Export Administration Regulations under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 772—[AMENDED]

■ 1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 2. Section 772.1 is amended:

■ a. By revising the definition of ''payload'' and the ''Note:'' to that definition; and

■ b. By revising the definition of ''range'' (MTCR) and the ''Technical Notes:'' to that definition, as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Payload. (MTCR context)—The total mass that can be carried or delivered by the specified rocket system or unmanned aerial vehicle (UAV) system that is not used to maintain flight.

Note: The particular equipment, subsystems, or components to be included in the ''payload'' depends on the type and configuration of the vehicle under construction.

Technical Notes: * * *

* * * * *

Range. (MTCR context)—The maximum distance that the specified rocket system or unmanned aerial vehicle (UAV) system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth.

Technical Notes:

a. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining ''range''.

b. The ''range'' for both rocket systems and UAV systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links or other external constraints.

c. For rocket systems, the ''range'' will be determined using the trajectory that maximizes ''range'', assuming ICAO standard atmosphere with zero wind.

d. For UAV systems, the ''range'' will be determined for a one-way distance using the most fuel-efficient flight profile (e.g. cruise speed and altitude), assuming ICAO standard atmosphere with zero wind.

* * * * *

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1A102 is amended by revising the Heading, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1A102 Resaturated pyrolized carbon-carbon components designed for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121).

* * * * *

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C101 is amended by revising the Heading, to read as follows:

1C101 Materials for Reduced Observables such as Radar Reflectivity, Ultraviolet/Infrared Signatures and Acoustic Signatures (i.e., Stealth Technology), Other than Those Controlled by 1C001, for applications usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km, and their subsystems.

* * * * *

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C107 is amended by revising paragraphs (c) and (d) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

1C107 Graphite and ceramic materials, other than those controlled by 1C007, which can be machined to any of the following products as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

c. Ceramic composite materials (dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz) for use in radomes useable in rockets, missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km; *or*

d. Silicon-Carbide materials, useable in rockets, missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, as follows:

d.1. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

d.2. Reinforced silicon-carbide ceramic composites usable for nose tips, re-entry vehicles, nozzle flaps.

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C111 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Propulsive substances:

a.1. Spherical aluminum powder, other than that specified on the U.S. Munitions List, with particles of uniform diameter of less than 200 micrometer and an aluminum content of 97% by weight or more, if at least 10 percent of the total weight is made up of particles of less than 63 micrometer, according to ISO 2591:1988 or national equivalents such as JIS Z8820.

Technical Note: A particle size of 63 micrometer (ISO R–565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E–11).

a.2. Metal fuels, other than that controlled by the U.S. Munitions List, in particle sizes of less than 60×10^{-6} m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, consisting 97% by weight or more of any of the following:

a.2.a Zirconium;

a.2.b Beryllium;

a.2.c Magnesium; or

a.2.d Alloys of the metals specified by a.2.a to a.2.c above.

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

a.3. Oxidizer substances usable in liquid propellant rocket engines, as follows:

a.3.a. Dinitrogen trioxide;

a.3.b. Nitrogendioxide/dinitrogen tetroxide;

a.3.c. Dinitrogen pentoxide;

a.3.d Mixed oxides of nitrogen (MON); a.3.e Inhibited red fuming nitric acid (IRFNA);

Technical Note: Mixed oxides of nitrogen (MON) are solutions of nitric oxide (NO) in dinitrogen tetroxide/nitrogen dioxide($N_2O_4NO_2$-) that can be used in missile systems. There are a range of compositions that can be denoted as MONi or MONij, where i and j are integers representing the percentage of nitric oxide in the mixture (e.g., MON3 contains 3% nitric oxide, MON25 25% nitric oxide. An upper limit is MON40, 40% by weight).

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (CTPB);

b.2. Hydroxy-terminated polybutadiene (HTPB), other than that controlled by the U.S. Munitions List;

b.3. Polybutadiene-acrylic acid (PBAA);

b.4. Polybutadiene-acrylic acid -acrylonitrile (PBAN);

b.5 Polytetrahydrofuran polyethylene glycol (TPEG).

Technical Note: Polytetrahydrofuran polyethylene glycol (TPEG) is a block co-polymer of poly 1,4-Butanediol and polyethylene glycol (PEG).

c. Other propellant additives and agents:

c.1. Butacene;

c.2. Triethylene glycol dinitrate (TEGDN);

c.3. 2-Nitrodiphenylamine;

c.4. Trimethylolethane trinitrate (TMETN);

c.5. Diethylene glycol dinitrate (DEGDN).

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A108 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A108 Radar systems and tracking systems, other than those controlled by 6A008, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Radar and laser radar systems designed or modified for use in ''missiles'';

Note: 6A108.a includes the following:

a. Terrain contour mapping equipment;

b. Imaging sensor equipment;

c. Scene mapping and correlation (both digital and analog) equipment;

d. Doppler navigation radar equipment.

b. Precision tracking systems, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, as follows:

b.1. Tracking systems which use a code translator installed on the rocket or unmanned aerial vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-

time measurements of in-flight position and velocity;

b.2. Range instrumentation radars including associated optical/infrared trackers with all of the following capabilities:

b.2.a. Angular resolution better than 3 milliradians;

b.2.b. Range of 30 km or greater with a range resolution better than 10 m rms;

b.2.c. Velocity resolution better than 3 m/s.

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6B108 is amended by revising the Heading, to read as follows:

6B108 Systems, other than those controlled by 6B008, specially designed for radar cross section measurement usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems.

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A002 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A002 Gyros, and angular or rotational accelerometers, having any of the following characteristics (see List of Items Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. A ''drift rate'' 'stability', when measured in a 1 g environment over a period of one month and with respect to a fixed calibration value, of:

Technical Notes: For the purpose of 7A002.a, 'stability' is defined as a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.) (IEEE STD 528–2001 paragraph 2.247)

a.1. Less (better) than 0.1 degree per hour when specified to function at linear acceleration levels below 12 g; *or*

a.2. Less (better) than 0.5 degree per hour when specified to function at linear acceleration levels from 12 g to 100 g inclusive;

b. An angle random walk of less (better) than or equal to 0.0035 degree per square root hour; *or*

Note: 7A002.b does not control spinning mass gyros (spinning mass gyros are gyros which use a continually rotating mass to sense angular motion).

Technical Note: For the purpose of 7A002.b, 'angle random walk' is the angular error buildup with time that is due to white noise in angular rate. (IEEE STD 528–2001)

c. Specified to function at linear acceleration levels exceeding 100 g.

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A102 is amended by revising the Heading and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A102 All types of gyros, other than those controlled by 7A002, usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, with a rated ''drift rate'' 'stability' of less than 0.5 degrees (1 sigma or rms) per hour in a 1 g environment and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

The list of items controlled is contained in the ECCN heading.

Technical Note: In this entry, the term 'stability' is defined as a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.) (IEEE STD 528–2001 paragraph 2.247)

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A103 is amended by revising the first sentence of the ''related controls'' paragraph and paragraphs (b) and (c) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A103 Instrumentation, navigation equipment and systems, other than those controlled by 7A003, and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) For rockets, missiles, or unmanned aerial vehicles controlled under the U.S. Munitions List (22 CFR part 121), items described in 7A103.b are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR part 121). * * *

Related Definitions: * * *

Items:

* * * * *

b. Integrated flight instrument systems, which include gyrostabilizers or automatic pilots, designed or modified for use in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km.

c. Integrated Navigation Systems, designed or modified for use in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and capable of providing a navigational accuracy of 200m Circular Error Probable (CEP) or less.

Technical Note: An 'integrated navigation system' typically incorporates the following components:

1. An inertial measurement device (e.g., an attitude and heading reference system, inertial reference unit, or inertial navigation system);

2. One or more external sensors used to update the position and/or velocity, either periodically or continuously throughout the flight (e.g., satellite navigation receiver, radar altimeter, and/or Doppler radar); and

3. Integration hardware and software.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, is amended by adding Export Control Classification Number (ECCN) 7A107 after ECCN 7A106 and before ECCN 7A115, to read as follows:

7A107 Three axis magnetic heading sensors having all of the following characteristics, and specially designed components therefor.

License Requirements

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Internal tilt compensation in pitch (+/−90 degrees) and roll (+/−180 degrees) axes;

b. Capable of providing azimuthal accuracy better (less) than 0.5 degrees rms at latitudes of +/−80 degrees, referenced to local magnetic field; *and*

c. Designed or modified to be integrated with flight control and navigation systems.

Note: Flight control and navigation systems in 7A107 include gyrostabilizers, automatic pilots and inertial navigation systems.

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D101 is amended by revising the Heading, to read as follows:

7D101 ''Software'' specially designed or modified for the ''use'' of equipment controlled by 7A001 to 7A006, 7A101 to 7A107, 7A115, 7A116, 7B001, 7B002, 7B003, 7B101, 7B102, or 7B103.

* * * * *

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E101 is amended by revising the Heading, to read as follows:

7E101 ''Technology'', according to the General Technology Note for the ''use'' of equipment controlled by 7A001 to 7A006, 7A101 to 7A107, 7A115 to 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103, or 7D101 to 7D103.

* * * * *

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A101 is amended by revising the Heading and the ''unit'' paragraph in the List of Items Controlled section, to read as follows:

9A101 Turbojet and turbofan engines (including turbocompound engines), other than those controlled by 9A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A111 is amended by revising the Heading, to read as follows:

9A111 Pulse jet engines, usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km, and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

* * * * *

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A120 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

9A120 Complete unmanned aerial vehicles, not specified in 9A012, having all of the following:

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Having any of the following:

a.1. An autonomous flight control and navigation capability; *or*

a.2. Capability of controlled-flight out of the direct vision range involving a human operator; *and*

b. Having any of the following:

b.1. Incorporating an aerosol dispensing system/mechanism with a capacity greater than 20 liters; *or*

b.2. Designed or modified to incorporate an aerosol dispensing system/mechanism with a capacity of greater than 20 liters.

Note: 9A120 does not control model aircraft, specially designed for recreational or competition purposes.

Technical Notes:

1. An aerosol consists of particulate or liquids other than fuel components, by—products or additives, as part of the ''payload'' to be dispersed in the atmosphere. Examples of aerosols include pesticides for crop dusting and dry chemicals for cloud seeding.

2. An aerosol dispensing system/mechanism contains all above devices (mechanical, electrical, hydraulic, etc.), which are necessary for storage and dispersion of an aerosol into the atmosphere. This includes the possibility of aerosol injection into the combustion exhaust vapor and into the propeller slip stream.

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A105 is amended by revising the Heading, to read as follows:

9B105 Wind tunnels for speeds of Mach 0.9 or more, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems.

* * * * *

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9B117 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

9B117 Test benches and test stands for solid or liquid propellant rockets, motors or rocket engines, having either of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. The capacity to handle solid or liquid propellant rocket motors or rocket engines having a thrust greater than 68 kN; or

b. Capable of simultaneously measuring the three axial thrust components.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9C110 is amended by revising the Heading, to read as follows:

9C110 Resin impregnated fiber prepregs and metal coated fiber preforms therefor, for composite structures, laminates and manufactures specified in 9A110, made either with organic matrix or metal matrix utilizing fibrous or filamentary reinforcements having a ''specific tensile strength'' greater than 7.62×10^4 m and a ''specific modulus'' greater than 3.18×10^6 m.

* * * * *

Dated: May 1, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–8685 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD13–07–016]

RIN 1625–AA08

Annual Seattle Yacht Club's ''Opening Day'' Marine Parade

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the Annual Seattle Yacht Club's ''Opening Day'' Marine Parade Special Local Regulations in Portage Bay, Portage Cut (Montlake Cut), and Union Bay from 8 a.m. to 3 p.m. on May 5, 2007. This action is necessary to ensure the safety of participants and spectators during the Annual Seattle Yacht Club's ''Opening Day'' Marine Parade. During the enforcement period, the regulated area shall be closed to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander.

DATES: The regulations in 33 CFR 100.1304 will be enforced from 8 a.m. to 3 p.m. on May 5, 2007.

FOR FURTHER INFORMATION CONTACT: Lieutenant Steve Kee, c/o Captain of the Port Puget Sound, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6002.

SUPPLEMENTARY INFORMATION: On May 4, 1989, the Coast Guard published a final rule (54 FR 19167) which established a

Special Local Regulation (SLR) and modified the regulations in 33 CFR 100.1304 for the safe execution of the Annual Seattle Yacht Club's ''Opening Day'' Marine Parade on the waters of Portage Bay, Portage Cut (Montlake Cut), and Union Bay. This SLR provides for a regulated area to protect spectators and parade participants. Movements are regulated for all vessels in the area as described under 33 CFR 100.1304 or unless otherwise regulated by the Captain of the Port or his designee. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this SLR.

The Coast Guard will enforce the SLR for the Annual Seattle Yacht Club's ''Opening Day'' Marine Parade, Seattle, WA in 33 CFR 100.1304 on May 5, 2007, from 8 a.m. to 3 p.m.

Under the provisions of 33 CFR 100.1304, the regulated area shall be closed for the duration of the event to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander. All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Northwest of the University Bridge.

(ii) North of the log boom that will be placed in Union Bay.

(iii) East of Webster Point so as not to interfere with the participating vessels departing Union Bay.

No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times unless cleared for such entry by the Patrol Commander.

Due to the large number of craft confined within this small body of water, all vessels, both spectator and participants, will maintain a ''NO WAKE'' speed. This requirement will be strictly enforced to preserve the safety of both life and property.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1304 (c) and 5 U.S.C. 552 (a).

Dated: April 20, 2007.

Mark J. Huebschman,

Commander, U.S. Coast Guard, Captain of the Port, Puget Sound, Acting.

[FR Doc. E7–8606 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–07–015]

RIN 1625–AA00

Security Zone: America's 400th Celebration, Jamestown, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The United States Coast Guard is amending the security zone encompassing waters within 2-nautical miles of Church Point, Jamestown Island, VA, for America's 400th Anniversary celebration. This action is intended to restrict vessel traffic within the security zone. This security zone is necessary to protect attendees of this event from potential maritime hazards and threats and enhance public and maritime security.

DATES: This rule is effective from 7 a.m. on May 11, 2007 until 10 p.m. on May 13, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–07–015 and are available for inspection or copying at USCG Sector Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Thomas Tarrants, Enforcement Branch Chief, U.S. Coast Guard Sector Hampton Roads, Virginia at (757) 483–8571.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(b)(B), a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM for this regulation. This amended temporary final rule is of limited duration and is necessary to provide for the security of dignitaries and the public attending the America's 400th Anniversary celebration.

For the same reasons good cause exists for making this regulation effective less than 30 days after **Federal Register** publication under 5 U.S.C. 553(d)(3).

Background and Purpose

Following terrorist attacks on the United States in September 2001, there is now a heightened awareness that vessels or persons could engage in subversive activity against targets ashore in the United States. This regulation is necessary to protect attendees of America's 400th Anniversary celebration on Jamestown Island, VA, from potential maritime threats. The Coast Guard previously published a NPRM in the **Federal Register** (72 FR 10958) and a temporary final rule in the **Federal Register** (72 FR 20053) implementing a security zone for this event. Under the temporary final rule, the security zone was in effect from 3 p.m. on May 11, 2007 until 10 p.m. on May 11, 2007; from 9 a.m. until 11 p.m. on May 12, 2007; and from 9 a.m. until 10 p.m. on May 13, 2007. Action is needed to provide additional protection for additional dignitaries and members of the public added after the publication of the temporary rule.

As amended, this temporary security zone will only be in effect from 7 a.m. on May 11, 2007 until 10 p.m. on May 13, 2007. The operators of the Jamestown Ferry have already been contacted and agree to operate on a modified schedule within the security zone. This zone will have minimal impact on vessel transits because vessels can request authorization from the Captain of the Port (COTP) to safely transit through the zone and they are not precluded from using any portion of the waterway except the security zone area itself. Additionally, public notifications announcing this regulation will be made via marine information broadcasts prior to the zone taking effect.

Discussion of Rule

The Coast Guard is amending the temporary security zone near Jamestown Island to provide protection to dignitaries and the public visiting the island. We are amending the temporary final rule to create a continuous effective period throughout the event. The amended security zone will be effective from 7 a.m. on May 11, 2007, until 10 p.m. on May 13, 2007. The amended security zone will also be enforced from 7 a.m. on May 11, 2007, until 10 p.m. on May 13, 2007.

The security zone will encompass all navigable waters around Jamestown Island, VA within a 2-nautical mile radius of Church Point at 37–12.45N, 076–46.66W. No persons or vessels may enter or remain in the regulated area

without authorization by the Captain of the Port, Hampton Roads, or his designated representative.

Regulatory Evaluation

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 so minimal that a full regulatory evaluation is unnecessary. Although this rulemaking restricts access to the regulated area, the effect of this rulemaking will not be significant because: (i) The COTP may authorize access to the security zone; (ii) the security zone will be in effect for a limited duration; (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities.

However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the described portion of the security zone between 7 a.m. on May 11, 2007, to 10 p.m. on May 13, 2007. The security zone will not have a significant impact on a substantial number of small entities because the zone does not encompass a high vessel traffic area, and vessels can request authorization from the COTP to enter the zone. Maritime advisories will also be issued, so the mariners can adjust their plans accordingly.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Thomas Tarrants, Enforcement Branch Chief, U.S. Coast Guard Sector Hampton Roads, Virginia at (757) 483–8571.

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 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 U.S. Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 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 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

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.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart D 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; 50 U.S.C 191, 195; 33 CFR 1.05–1(g), 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. Amend temporary § 165.T05–015 by revising paragraphs (d) and (e) to read as follows:

§ 165.T05–015 Security Zone: Jamestown Island, VA.

* * * * *

(d) *Enforcement period:* The security zone will be enforced from 7 a.m. on May 11, 2007, until 10 p.m. on May 13, 2007.

(e) *Effective period:* This regulation is effective from 7 a.m. on May 11, 2007, to 10 p.m. on May 13, 2007.

Dated: April 27, 2007.

John S. Kenyon,

Commander, U.S. Coast Guard, Acting Captain of the Port, Hampton Roads.

[FR Doc. 07–2246 Filed 11–3–07; 11:02 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AT99

Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations

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

ACTION: Final rule.

SUMMARY: This rule revises the list of nonrural areas identified by the Federal Subsistence Board (Board, we, us). Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska. We are changing Adak's status to rural. We also are adding Prudhoe Bay to the list of nonrural areas. The following areas continue to be nonrural, but we are changing their boundaries: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area. We have also added Saxman to the Ketchikan nonrural area. We are making no other changes in status. This final rule differs from the proposed rule relative to the Kodiak area and Saxman: For reasons set forth below, we did not change the status of the Kodiak area from rural to nonrural, as we had proposed, and we included Saxman in the nonrural Ketchikan area, which we had not proposed. Residents of those areas changing from rural to nonrural have 5 years to come into compliance with this rule.

DATES: *Effective Date:* This rule is effective June 6, 2007. *Compliance Date:* Compliance with the nonrural determinations for Prudhoe Bay, Point MacKenzie, the expanded portion of Sterling, Fritz Creek East, North Fork Road area, Saxman, and the additions to the Ketchikan nonrural area is required by May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; 3601 C Street, Suite 1030, Anchorage, AK 99503, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that ''the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *'' and that ''continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened. * * *'' As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a program to provide rural Alaska residents a priority for the taking of fish and wildlife on public lands in Alaska for subsistence uses, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, priority, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural priority in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* caused the State to delete the rural priority from the subsistence statute, which therefore negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Departments published the Temporary Subsistence Management Regulations for Public Lands in Alaska in the **Federal Register** (55 FR 27114). Permanent regulations were jointly published on May 29, 1992 (57 FR 22940), and have been amended since then.

As a result of this joint process between Interior and Agriculture, these regulations can be found in the titles for Agriculture and Interior in the Code of Federal Regulations (CFR) both in title 36, ''Parks, Forests, and Public

Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), and December 27, 2005 (70 FR 76400), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program, as established by the Secretaries. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management (BLM); the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Rural Determination Process

With a **Federal Register** notice on October 5, 1990 (55 FR 40897), the newly established Federal Subsistence Board initiated the preparation of an Environmental Impact Statement as a vehicle for widespread public review and participation in the development of the final temporary regulations. The rural determination process was included, and subsequently on November 23, 1990 (55 FR 48877), the Board published another notice in the **Federal Register** explaining the proposed Federal process for making rural determinations, the criteria to be used, and the application of those criteria in preliminary determinations. Public meetings were held in approximately 56 Alaskan communities, specifically to solicit comments on the proposed Federal Subsistence Management Program. On December 17, 1990, the Board adopted final rural and nonrural determinations, which were published on January 3, 1991 (56 FR 236). Final programmatic regulations were published on May 29, 1992, with only slight variations in the rural determination process (57 FR 22940).

Federal subsistence regulations require that the rural/nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data. The Board evaluated several options for conducting the review and decided to adopt an approach similar to that taken in 1990, which used criteria established in Federal subsistence regulations.

Although the process uses data from the 2000 census for its review, some data were not compiled and available until 2005. Data from the Alaska Department of Labor were used to supplement the census data.

During February–July 2005, the staff of the Federal Subsistence Management Program conducted an initial review of the rural status of Alaska communities, looking at the 2000 census data for each community or area with an emphasis on what had changed since 1990. From this initial review, staff compiled a report that included a proposed list of communities and areas for which further analysis appeared warranted. In addition, the report described the method used to develop this list. In August–October 2005, the public and Federal Subsistence Regional Advisory Councils were invited to comment on the results of this initial review.

At a meeting in Anchorage on December 6–7, 2005, the Board took public testimony and determined that additional information was needed on 10 communities and areas before it decided upon any potential changes.

- For three communities, the further analysis that followed was focused on evaluation of rural/nonrural status, as follows:

Kodiak, Adak, and Prudhoe Bay: At that time, Kodiak and Prudhoe Bay were considered rural, and Adak was considered nonrural. These three communities were further analyzed as to their rural/nonrural status.

- For five nonrural groupings of communities and areas, further analysis evaluated the possibility of excluding or including boundary areas, as follows:

Fairbanks North Star Borough: Evaluated whether to continue using the entire borough as the nonrural area, or whether to separate some outlying areas and evaluated their rural/nonrural status independently.

Seward Area: Evaluated whether to exclude Moose Pass and similarly situated places from this nonrural grouping and evaluate their rural/nonrural status independently.

Wasilla/Palmer Area: Evaluated whether to include Willow, Point MacKenzie, and similarly situated places in this nonrural grouping.

Homer Area: Evaluated whether to include Fox River, Happy Valley, and similarly situated places in this nonrural grouping.

Kenai Area: Evaluated whether to exclude Clam Gulch and similarly situated places from this nonrural grouping and evaluated their rural/nonrural status independently, and evaluated whether to include an additional portion of the Sterling census designated place in the nonrural Kenai area.

- In addition, two areas were further analyzed as follows:

Ketchikan Area: Evaluated whether to include Saxman, and other areas outside the current nonrural boundary, and evaluated the rural/nonrural status of the whole area.

Delta Junction, Big Delta, Deltana and Fort Greely: Evaluated whether some or all of these communities should be grouped, and if so, their rural/nonrural status evaluated collectively.

This assignment for additional analysis differed from the proposed list released for public comment in July 2005, in that: (1) The scope of the review was broadened for the Ketchikan area, considered nonrural, to include an analysis of rural/nonrural characteristics of the entire area; (2) the rural/nonrural status of Prudhoe Bay was added; and (3) additional analysis of Sitka was not believed to be necessary.

Sitka, whose population had increased from 8,588 people in 1990 to 8,835 in 2000, had been initially identified as an area possibly warranting further analysis. However, during its December 6–7, 2005, meeting, the Board heard substantial public testimony regarding the rural characteristics of Sitka and determined that no additional analysis was necessary, leaving Sitka's rural status unchanged.

During January–May 2006, Federal subsistence staff conducted in-depth analyses of each community or area on the Board-approved list of communities and areas identified for further analysis.

On June 22, 2006, the Board met in executive session to develop the list of communities and areas they proposed to be nonrural. Those communities and areas were identified in a proposed rule published in the **Federal Register** on August 14, 2006 (71 FR 46416).

Population size is a fundamental distinguishing characteristic between rural and nonrural communities. Under the current programmatic guidance in Federal subsistence regulations:

- A community with a population of 2,500 or less is deemed rural, unless it possesses significant characteristics of a nonrural nature, or is considered to be socially, economically, and communally part of a nonrural area.

- A community with a population of more than 7,000 is presumed nonrural, unless it possesses significant characteristics of a rural nature.

• A community with a population above 2,500 but not more than 7,000 is evaluated to determine its rural/nonrural status. The community characteristics considered in this evaluation may include, but are not limited to, diversity and development of the local economy, use of fish and wildlife, community infrastructure, transportation, and educational institutions.

Communities that are economically, socially, and communally integrated are combined for evaluation purposes. The Board identified three guidelines or criteria for analysis to assist in its determination of whether or not to group communities in its review of rural determinations. The criteria that were used include: (1) Are the communities in proximity and road-accessible to one another? The first criterion, proximity and road accessibility, is considered a logical first step in evaluating the relationship between communities, and, applied in relation to the other two criteria, is considered a reasonable indicator of economic, social, and communal integration. (2) Do they share a common high school attendance area? The second criterion, regarding sharing a common high school attendance area, is taken to be an indicator of the social integration of communities. This is an improvement by way of modification from the former criterion of a shared school district. The public pointed out in past testimony that attendance in a common school district often reflects political or administrative boundaries rather than social integration. A shared social experience is better captured by the shared high school criterion. (3) Do 30 percent or more of the working people commute from one community to another? This criterion, regarding whether working people commute from one community to another, was identified as providing meaningful information relating to the grouping of communities. Also, the U.S. Census uses this criterion because commuting to work is an easily understood measure that reflects social and economic integration. These criteria were not considered separately, but assessed collectively, with the recommendation to group communities being dependent upon the collective assessment.

Community characteristics and specific indicators that the Board used to evaluate rural/nonrural status included: (1) Economy—wage employment, percent unemployment, per capita income, diversity of services, cost-of-food index, and number of stores of defined large national retailers; (2) Community infrastructure—including the cost of electricity; (3) Fish and wildlife use—variety of species used per household, percentage of households participating, level of average harvest per capita for all subsistence resources combined, and level of average harvest per capita for salmon and large land mammals only; (4) Transportation—variety of means, predominant means, and length of road system; and (5) Educational institutions present in the community.

The Board's analysis and preliminary efforts to distinguish between rural places and nonrural places were heavily reliant on population size, but when the Board used other characteristics, its approach was based on a totality of the circumstances. Unemployment is generally higher and per capita income is generally lower in rural places than in nonrural places. Cost of food and cost of electricity were generally higher in the rural communities than in the nonrural. Subsistence per capita harvest of all resources shows a pattern of increasing amount with decreasing population size among nonrural areas, and typically higher levels in rural communities. The per capita harvest of salmon and large land mammals also shows a general pattern of increasing amount with decreasing population size among nonrural areas, and typically higher levels in rural communities. The defined large national retailers were concentrated in the nonrural communities.

Public Review and Comment

The Board published a proposed rule (71 FR 46416) on August 14, 2006, soliciting comments through October 27, 2006, on the proposed revision to the list of areas designated as nonrural. The Board then held public hearings in Kodiak on September 20–21, 2006, in Saxman on September 25, 2006, in Ketchikan on September 26, 2006, and in Sitka on October 10, 2006. Approximately 230 individuals testified at those hearings. During the public comment period, we received an additional 300 comments from individuals and 31 comments from organizations, agencies and government representatives, as well as 11 resolutions from city, borough, and tribal governments and organizations. Virtually all of the written comments from individuals came from Sitka, Kodiak, Ketchikan, and Saxman. Most expressed a desire for their communities to have a rural designation.

Five of the 10 Regional Councils had comments and recommendations to the Board on the proposed rule on the decennial review of rural/nonrural determinations.

Southeastern Alaska Federal Subsistence Regional Advisory Council—The Council concurred with the Board's proposed rule to maintain the rural status of Sitka and Saxman. The Council did not agree with the Board's proposed rule for Ketchikan. The Council was also concerned that the presumptive nonrural population threshold of 7,000 is in error, and recommended a change, if a threshold must be used, to 11,316.

Southcentral Alaska Federal Subsistence Regional Advisory Council—The Council supported the proposed rule for all changes in the Southcentral region. The Council also commented that guidelines and criterion need to be reviewed further to clearly address communities surrounding military bases and hub communities on the road system.

Kodiak/Aleutians Federal Subsistence Regional Advisory Council—The Council recommended that Kodiak and its road system should remain classified as rural, and that classification of Adak should be changed from nonrural to rural.

Eastern Interior Alaska Federal Subsistence Regional Advisory Council—The Council recommended the removal of Fort Greely from the Board's grouping of the four census designated places of Delta Junction, Big Delta, Deltana, and Fort Greely with the intent that the communities retain their rural status.

North Slope Federal Subsistence Regional Advisory Council—The Council recommended changing the designation of Prudhoe Bay from rural to nonrural.

We will address the major comments from all sources below:

Comment: The Board has failed to provide sufficient information and assurances of consistency regarding the basis for the Board's evaluations of rural status or of the effects of a Board determination. This lack of information has caused unnecessary fear and confusion among Alaskans.

Response: The Board has conducted this review of rural/nonrural determinations with substantial opportunities for public involvement, and with substantial informational outreach. The generalized timeline for the process has been previously noted. In the course of this process, there have been public news releases, a question and answer sheet, fact sheet, briefings to Regional Advisory Councils, staff reports, a proposed rule, Board public meetings, and Board public hearings in four communities.

Comment: At a minimum, the Federal Subsistence Board is obligated to

construe Title VIII and the regulations implementing it broadly in favor of Alaska Natives.

Response: Title VIII and the Federal subsistence management system established to implement it are racially neutral. The Ninth Circuit Court in *Hoonah Indian Association* v. *Morrison*, 170 F.3d 1223, 1228 (9th Cir. 1999) has concluded that Title VIII is not Indian legislation for the purpose of statutory construction.

Comment: Communities should not be grouped or are being improperly grouped. The Coast Guard base in Kodiak should not be grouped in the Kodiak area; the Coast Guard base in Sitka should not be grouped in the Sitka area; the Community of Saxman should not be grouped in the Ketchikan area.

Response: Section ____.15(a)(6) requires that communities that are economically, socially, and communally integrated be considered in the aggregate. That means they must be grouped for consideration. It should be noted that places in a grouping need not be economically, socially, or communally homogenous in order to be included. Portions of a nonrural grouping may appear more rural than other portions of the grouping and may have their own community governments and services, but may still be combined or joined in one area.

Comment: Many people objected to the use of aggregating communities or to the use of population in making presumptive determinations.

Response: The procedure of considering aggregated areas has been in place in Federal Subsistence Management regulations (50 CFR 100.15(a)(6) and 36 CFR 242.15(a)(6)) since 1992 and recognizes the fact that some areas and/or communities are interrelated and should be considered as a whole. The use of population to set presumptive thresholds has also been in regulation (____.15(a)(1–3)) since 1992 and recognizes the intent of Congress and the Courts in using population as an initial determinant of the rural or nonrural nature of a community or area. The plain meaning of the term ''rural'' involves population. Since larger population size may be seen as an impediment to maintaining or acquiring rural status for a community or area, there is an incentive to minimize the importance of population size as a factor or to exclude portions of the total population in the assessment of a community's size. The use of a population threshold recognizes that population alone is not the sole indicator of a rural or nonrural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural.

Comment: The Federal staff analysis ignores the historical context for aggregation. The Board's decision making process should include an evaluation regarding small communities along road systems and their links to larger population centers with services that residents of these small communities regularly use. The 2006 Federal staff analysis should have evaluated the changes throughout the Kenai Peninsula and should provide sufficient analysis to allow the Board to consider reinstating an aggregation of communities on the road-connected Kenai Peninsula.

Response: The Board considered grouping issues for some areas, as assigned for further staff analysis in December 2005. The method to be used for the assigned staff analyses was described and subjected to public comment earlier in 2005. An analysis that would evaluate aggregation of the entire road-connected Kenai Peninsula was not proposed by the Board for assignment in July 2005, was not requested by ADF&G at the December 2005 Board public meeting at which the assignments were made, was not requested by the public, and was not assigned by the Board. The staff analysis is consistent with the assignment made by the Board in public session. Further, given the criteria used by the Board, there was no reason to address the issue further during the December 2006 public meeting.

Comment: Testimony and public comments have challenged the appropriateness of the derivation of the 7,000 threshold from the Ketchikan population level. The point made is that the 7,000 level was the approximate size of Ketchikan City at the time of ANILCA passage, but that the greater Ketchikan area had a population of about 11,000 at that time. The concern is that the area population of 11,000 should have been taken to represent Congressional intent, since the approach as implemented requires grouping of economically, socially, and communally integrated places.

Response: Whether the regulations should describe a threshold of 11,000 derived from the Ketchikan Area as a whole, or 7,000 derived only from the City of Ketchikan, has no effect on the outcome of this decennial review. Existing population levels identified in regulation provide for a presumption unless a community or area exhibits characteristics contrary to the initial presumption. This provides the Board latitude to deviate from the presumption thresholds as warranted by additional data. Communities and areas of all sizes were given adequate consideration, and multiple opportunities were provided for review and comment by Regional Advisory Councils, the State of Alaska, and the public. None of the communities or areas (as defined by grouping in the course of this review) that were proposed by the Board for change in status was in the population range of 7,000 to 11,000. For future clarification, the Board will interpret the 7,000 population figure as a figure to be used for an individual community and the 11,000 population figure as a figure to be used when considering aggregated areas.

Comment: The Board's decisions for proposing nonrural status for some communities and not others was made in executive session on June 22, 2006.

Response: The Board's decisions regarding communities and areas assigned for further analysis were made in a public meeting December 6–7, 2005. At the executive session on June 22, 2006, the Board developed the proposed rule, the release of which activated an extensive public comment period, including Board hearings in four communities.

Comment: The Board did not use a consistent process for each community in evaluating whether a community is rural or nonrural. This is most clearly demonstrated in the Board's decision to maintain Sitka's rural status without review or comparison to the standards.

Response: To address these concerns, we will need to recall the approach for the initial steps in the review process, which was presented to the Councils for their consideration during the February–March 2005 Council meeting window, coincident with a public comment period. There were 300 communities or areas (as grouped by the Federal Subsistence Management Program) in Alaska in 2000, using data from the 2000 U.S. Census. The initial review work by staff in support of the Board, conducted with an emphasis on what has changed since the initial determinations were made in 1990, was reported to the Board in July 2005. The Board then proposed a list of communities and areas for further analysis, which was subjected to public comment and Council review and recommendation during the September–October 2005 Council meeting window. Sitka was one of the places initially proposed by the Board as a candidate for further analysis because it is rural in status but grew further over the 7,000 threshold between 1990 and 2000, which was one of the triggers for consideration. That growth amounted to 247 people (or 3 percent), from 8,588 in

1990 to 8,835 in 2000 (using Sitka City and Borough as the area of interest). Notably, Sitka's population remains below the 11,000 figure discussed above for aggregated areas. The initial steps in the review process winnowed the number of communities and areas proposed for further analysis from the potential scope of 300 to 10. The public comment period in the fall of 2005, and the Board public meeting in December 2005, provided further information and feedback on the first phase of the review, with the Board seeking to learn more and being open to adding communities and areas to, or removing them from, the list for further analysis. Based on public comments and Regional Council recommendations, and testimony at the December 2005 Board public meeting, the Board added to, and removed from, the list proposed for further analysis in making its assignment to staff for further analysis. In the case of Sitka, the prevailing view of the Board was that sufficient information had been obtained to preclude the need for further staff analysis. The subsequent staff report to the Board on the assigned further analyses included historical and current information on population and community characteristics for Sitka along with other places from around the State, in carrying forward the range of coverage that had been provided in 1990.

Comment: The final analysis used by the Board is selective in its use of the regulatory criteria and does not address other communities whose status has significantly changed between the 1990 and 2000 census.

Response: The June 23, 2006, Office of Subsistence Management (OSM) report was not selective in its use of the criteria. Tabular appendix tables and in-text graphics presented historical and current population data and indicators for all five community characteristics identified in regulation. In addition, data was presented on population density, which is a characteristic not identified in regulation. Not all data types were available for all communities and areas, but relevant data were provided to the extent available. The June 23, 2006, OSM report was not intended to address all communities or areas within which changes may have occurred, but rather those for which additional staff analysis was assigned by the Board. The Federal review process, from the beginning, involved opportunities for Council, State, and public input. The Board review was intended to progressively winnow the scope of candidate communities for potential change in status, or grouping and status, from the approximately 300 places in Alaska.

Comment: Federal regulations specify that the criteria ''shall be considered in evaluating a community's rural or nonrural status.'' However, the analysis prepared by Federal staff and the Board's preliminary determinations reflected in the proposed rule make selective use of the criteria. Old Believer communities on the Kenai Peninsula and Delta Junction are two examples where consideration of the use of fish and wildlife resources, as well as other factors, are minimized or omitted.

Response: The regulatory phrase, quoted above, is taken out of context. The Federal regulations specify that ''community or area characteristics shall be considered in evaluating a community's rural or nonrural status. The characteristics may include, but are not limited to: [a list of five characteristics follows].'' This regulatory construction provides substantial latitude to the Board in the type of community characteristics used to evaluate rural or nonrural status. All five of the characteristics listed in regulation were addressed with data for one or more indicators in the historical (1990) and current (2006) tables presented in appendices to the June 23, 2006, OSM report to the Board, and selected indicators were also presented in graphs for ease of visual interpretation. Characteristics were evaluated for communities using the data as available. The issue raised regarding the Old Believer communities confuses the community characteristics used to address rural/nonrural status with the grouping of economically, socially, and communally integrated places, for which the Board identified three criteria as indicators. For Delta Junction, data on community characteristics were used to the extent available. Sufficient information on community use of fish and wildlife was not available in a way that would have been reliable for contributing to an assessment of rural/nonrural status.

Comment: The June 23, 2006, Federal staff analysis fails to incorporate results of previous statewide analyses. Available comparisons of patterns and their changes between 1990 and the 2000 census, as well as subsequent changes, are not presented consistently for all communities.

Response: The June 23, 2006, OSM report is not selective in its use of population data or community characteristics, and both historical and current data are presented. Tabular appendix tables and in-text graphics present historical and current population data and indicators for all five community characteristics identified in regulation. In addition, data is presented on population density, which is a characteristic not identified in regulation. Not all data types were available for all communities and areas. Current data were presented in a standardized way for those data types for which it was available. Additionally, the analysis never intended to examine all communities statewide, nor the changes for all communities statewide.

Comment: There is no need for a nonrural designation because the resources are adequate to support all users.

Response: ANILCA requires the Federal Subsistence Board to distinguish between rural and nonrural areas. Availability of resources is not relevant to rural/nonrural determinations.

Comment: The analysis for Adak needs to be expanded to evaluate subsistence use of fish and wildlife by the current population, in light of the proposed designation of rural status, rather than just relying on population size, remote location, and salmon harvest data.

Response: Adak is a remote community in the Aleutian Islands which has undergone a substantial decrease in population (from more than 4,600 people in 1990 to less than 200 in 2005). The June 23, 2006, OSM report does not present per capita subsistence use information in the appendix database because such data are not available for Adak in a way that would be consistent with other places for which there are household survey data. The report section on Adak does provide some limited information on salmon harvests. However, the main point of relevance for Adak is in the category of population size.

Comment: The analysis does not address what, if any, impacts on fish and wildlife uses may result if the Board changes the rural/nonrural status of Prudhoe Bay. The analysis does not describe the result of a nonrural determination for any area that contains limited to no Federal lands. The analysis also does not consider the effects of the nonrural designation on other North Slope resident's customary and traditional uses of the Prudhoe Bay/Deadhorse area. One commentor also claims that it was inaccurate for the June 23, 2006, OSM report to state that ''harvest of subsistence resources has never been reported by Prudhoe Bay residents,'' citing a 2001 ADF&G database.

Response: The analysis notes that the permanent population of Prudhoe Bay was 5 in 2000, 2 in 2005, and is now

reportedly 0. With virtually, or literally, no permanent population, there are no impacts to fish and wildlife uses operative with a change in status. A rural/nonrural determination is unrelated to whether Federal lands are present in the vicinity. Use of Federal public lands open to subsistence take by rural residents is not affected by designation of nonrural status for residents of parts of that geographic area. State database updates since 2001 may include harvest data for reported residents of Prudhoe Bay. Because of customary and traditional use determinations, the only large mammals that could have been taken under Federal subsistence regulations by persons claiming Prudhoe Bay residency were black bear, caribou, and sheep. However, given the de minimus residency in Prudhoe Bay, and the other characteristics and restrictions described, subsistence use of fish and wildlife is not a factor.

Comment: The analysis for Clam Gulch describes two options—neither of which includes any information on fish and wildlife harvest levels and harvest areas. For the Wasilla, Homer, and Delta Junction areas, fish and wildlife data are not discussed.

Response: The analyses for Clam Gulch in relation to the Kenai area and the analyses for the Wasilla and Homer areas were limited in scope to the question of whether they should be grouped with larger nonrural areas. Those analyses were done consistent with the guidelines identified by the Board for evaluating the grouping of communities and areas, the method for which was submitted to public comment in an earlier stage of the process. Adequate information on customary and traditional hunting fishing, and trapping practices for the Delta Junction area was not available to allow for evaluation consistent with other areas of the state for which the staff analysis provides data, nor is use of fish and wildlife resources one of the criteria used for grouping.

Comment: The OSM analysis of the Kodiak area does not make a convincing case to disaggregate any portion of the road system from the rest of the road-connected area. The analysis does not discuss Kodiak's role as a regional center and does not mention the ADF&G report on regional centers.

Response: The OSM staff analysis laid out options for including, or not including, Chiniak in the Kodiak Area grouping, and related considerations for the Pasagshak portion of the remainder area. The Board exercised its judgment in reviewing the grouping of the remainder area with the City of Kodiak, and other identified places, including Chiniak and the more distant portions of the road-connected remainder area. The OSM staff analysis provided an historical background of Kodiak Island. The central role of Kodiak City to the region is noted, as is the relationship to outlying areas and the movement of people to, from, and through Kodiak City.

Comment: Kodiak has become more rural since 1990. Kodiak's dependence on fisheries is a rural characteristic. The local economic downturn has led to an increase in dependence on fish and wildlife harvest. The cost of living in Kodiak, particularly for food, housing, and electricity, is among the highest in the State. Kodiak is isolated; weather and distance make travel difficult and expensive. There is a high level of sharing.

Response: The Board did not make a determination to change Kodiak from a rural area. Further information on the Board's action is provided later in this Preamble.

Comment: Testimony and comment letters supported retaining Saxman, and the Waterfall subdivision north of Ketchikan, as rural areas. Saxman is an independent community with its own Tribal government, mayor, and fraternal organizations. Fish and wildlife usage is higher than in Ketchikan City. For Saxman, Tribal culture plays a large role in daily life. Saxman is not integrated with Ketchikan.

Response: The Board made a determination to group all of the road-connected areas, including Waterfall subdivision and Saxman, as well as Pennock Island and parts of Gravina Island, in the Ketchikan Area. Further information on the Board's action is provided later in this Preamble.

Comment: There was testimony that the entire Ketchikan area should be treated the same and that Ketchikan and Saxman and the outlying areas along the road system should all be rural. People stated that gathering subsistence foods is important not only for nutrition, but also to culture, which is passed on to young children and family members. The island community is very isolated, and the cost of living is high, making it difficult to survive without supplementing incomes with subsistence foods.

Response: The Board considered these points, but did not make a determination to change Ketchikan from a nonrural area. Further information on the Board's action is provided later in this Preamble.

Comment: If a community is designated nonrural, the residents will not be able to harvest their traditional subsistence resources.

Response: For communities that change from rural to nonrural, the implementation will not occur until 5 years after this date. Additionally, residents of nonrural areas may harvest their traditional subsistence resources from Federal lands under existing State regulations. Many of the resources (*e.g.* seaweed, seals, migratory birds, cod, halibut, shrimp, crabs, and salmon taken in marine waters) that local people mentioned as being very important to them are currently being taken in areas of State jurisdiction or are not under the jurisdiction of the Federal Subsistence Management Program. Any changes in rural/nonrural determinations would have no impact on the harvesting of these resources.

Summarized below are the Board's final action for each area analyzed and the justification for that action. This final rule differs from the proposed rule relative to the Kodiak area and Saxman. The Board had proposed to add the Kodiak area to the list of nonrural areas but did not, for the reasons set forth below. The Board had also proposed that the nonrural Ketchikan area not include Saxman, but Saxman has been included, for the reasons set forth below.

Adak: Change Adak's status from nonrural to rural. Following the closure of the military base, the community of Adak decreased in population by 94 percent between the years 1990 and 2000. It currently has 167 residents (2005), which is well below the presumptive rural threshold of 2,500 persons. Adak is also extremely remote and is accessible only by boat or plane, with the nearest community (Atka) 169 miles away. With the changes that have occurred since the 1990s, Adak now has rural characteristics typical of a small isolated community.

Prudhoe Bay (including Deadhorse): Change Prudhoe Bay's status from rural to nonrural. In 2000 Prudhoe Bay had one permanent household comprised of five people. There were reportedly no permanent residents in February 2006. Prudhoe Bay has none of the characteristics typical of a rural community. Prudhoe Bay is an industrial area built for the sole purpose of extracting oil. The oil companies provide everything employees need: Lodging, food, health care, and recreation. The thousands of people in Prudhoe Bay do not live there permanently, but work multiweek-long shifts. They eat in cafeterias and live in group quarters. There are no schools, grocery stores, or churches. Subsistence is not a part of the way of life. Hunting

in the area and possession of firearms and ammunition are prohibited. Based on its industrial characteristics, Prudhoe Bay is now determined to be nonrural.

Fairbanks North Star Borough: No changes to this nonrural grouping are being made. In applying the grouping criteria as indicators of economic, social, and communal integration, the Board continues to define the current nonrural boundary of the Fairbanks Area as the boundary of the Fairbanks North Star Borough. No census designated places (CDPs) should be excluded from the nonrural grouping for the following reasons: (1) All CDPs are road accessible to one another. Although the Harding-Birch Lakes and Salcha areas are more sparsely populated than central areas of the borough, both communities include many occasional-use homes owned by Fairbanks residents. Further, both places are home to only a few year-round residents. (2) The majority of the Borough's high school students are bused to one of the schools located in Fairbanks, North Pole, or Eielson. (3) The Remainder area of the North Star Borough should be included in the grouping because the majority of the population is road connected and over half (57 percent) of the workers residing in this area commute to Fairbanks for employment. Additionally, 75 percent of the workers living in Harding-Birch Lakes drive to the City of Fairbanks to work, and 71 percent of the working population in Pleasant Valley commute to the City of Fairbanks.

Delta Junction Vicinity: No changes are being made to the rural status of Delta Junction, or the communities in the immediate vicinity. In applying the grouping criteria as indicators of economic, social, and communal integration, the four Delta Junction vicinity CDPs assigned for analysis (Delta Junction, Big Delta, Deltana, and Fort Greely) should be grouped as an area for purposes of rural/nonrural analysis because they fulfill the three guidelines for grouping: (1) All four CDPs are road connected and proximal; (2) the majority of the high school-aged students from Big Delta, Deltana, and Fort Greely attend high school in Delta Junction; and (3) in the two outlying CDPs, over 30 percent of the workers commute within the vicinity (41 percent of the workers living in Big Delta commute to either Delta Junction, Deltana, Fort Greely, or to a Remainder area within the Southeast Fairbanks Census Area, and 45 percent of the workers in Deltana commute to Delta Junction or Fort Greely).

The four places grouped into the Delta Junction Area will remain rural in status. The population size of the grouping (3,921) places it in the nonpresumptive midrange, and information on the characteristics of the grouping, although somewhat limited, is indicative of a rural character. The recent economic upswing to the area due to construction of the Missile Defense system at Fort Greely and development of the Pogo Mine is thought to be temporary.

Seward Area: No changes to this nonrural grouping are being made. In applying the grouping criteria as indicators of economic, social, and communal integration, the Moose Pass, Crown Point, and Primrose CDPs should remain within the Seward Area grouping. Moose Pass, Crown Point, and Primrose CDPs meet all the criteria for grouping: proximity and road-accessibility to the Seward Area; their students attend the high school in Seward; and greater than 30 percent of workers commute to Seward for employment.

Wasilla/Palmer Area: Include the Point MacKenzie CDP in the nonrural Wasilla/Palmer Area grouping but do not include the Willow CDP. The Point Mackenzie CDP meets all the criteria for grouping with the Wasilla/Palmer Area. The Point MacKenzie CDP is in proximity to the Wasilla/Palmer Area and road-accessible; their students attend Wasilla High School; and 50 percent of workers commute to the Wasilla/Palmer Area for employment. This change makes Point McKenzie part of a nonrural area, a change from its current rural status. Willow CDP will not be included in the Wasilla/Palmer Area grouping. Students in the Willow CDP are located in two attendance areas for high schools, within and outside of the Wasilla/Palmer Area. The level of commuting for workers to the Wasilla/Palmer Area is at 23.9 percent, which is below the criteria identified for grouping.

Kenai Area: Change the boundaries of the nonrural Kenai Area to include all of the current Sterling CDP, and make no change to the current grouping and status of Clam Gulch CDP as part of the nonrural Kenai Area. Clam Gulch CDP will continue to be included in the Kenai Area grouping because, although students of Clam Gulch CDP attend high school outside of the Kenai Area, the commuting of workers to the Kenai Area is on the order of 30 percent, and Clam Gulch is connected by paved highway to the Kenai Area, with which it has been grouped since initial determinations were made in 1990. Cohoe CDP will remain within the Kenai Area grouping. Cohoe students attend a high school in the Kenai Area and the level of work commuting, at 69.5 percent, is significantly above the minimum criteria for grouping. The Sterling CDP has been part of the nonrural Kenai Area since 1990. During the course of the analysis, it was noted that for the 2000 census, the Sterling CDP had expanded in size, such that a significant portion of the CDP extended beyond the boundary of the nonrural Kenai Area. The Board decided that the boundaries of the Kenai Area should be adjusted to include all of the current Sterling CDP. Students within the Sterling CDP go to high school within the Kenai Area and the level of commuting is at 61 percent of workers, well above the minimum criteria for grouping.

Homer Area: Change the boundaries of the nonrural Homer Area to include all of the Fritz Creek CDP (not including Voznesenka) and the North Fork Road portion of the Anchor Point CDP. This change makes Fritz Creek East, except for Voznesenka , and the North Fork Road portion of the Anchor Point CDP nonrural, a change from their current rural status. The Board concluded for Fritz Creek East that, except for Voznesenka, the residents are economically, socially, and communally integrated with the Homer Area. Fritz Creek East is in proximity and road-connected to the Homer Area. The Homer High School attendance area includes their students, and 44 percent of their workers commute to the Homer Area. Voznesenka will not be included in the Homer Area because, while it is in proximity and road-connected to the Homer Area, the number of jobs shown as being located within the Homer Area is only about 20 percent, and Voznesenka students attend high school in Voznesenka.

The Board found that residents of the North Fork Road area fully meet two of the three criteria, proximity and commuting of workers. For the third criteria, although students have the option of attendance in Nikolaevsk School or Ninilchik High School, the vast majority go to Homer High School. This is sufficient basis for considering the North Fork Road area of the Anchor Point CDP to be economically, socially, and communally integrated with the nonrural Homer Area.

The Board found that residents of the Happy Valley CDP fulfill only the proximity criterion for grouping with the Homer Area. Happy Valley students are within the Ninilchik High School attendance area, and less than 30 percent of Happy Valley workers commute to the Homer Area (14.4 percent). The residents of the Happy Valley CDP will not be included with the Homer Area.

Nikolaevsk CDP, north of the Anchor Point CDP and connected to the Homer Area by the North Fork Road, does not warrant inclusion in the Homer Area. There is a K–12 school in Nikolaevsk, and data show that only 22 percent of jobs held by Nikolaevsk residents were located in the Homer Area.

The residents of Fox River CDP, primarily in the communities of Razdolna and Kachemak Selo, do not meet any of the three criteria, which would indicate that Fox River residents are not economically, socially, or communally integrated with the Homer Area.

Kodiak Area: The Board defined the Kodiak Area consisting of the road system, the City of Kodiak, the Mill Bay area, Womens Bay, Bell's Flats, the Coast Guard Station, Chiniak, Pasagshak, and Anton Larsen and made no change to its rural status. Although the population of the Kodiak Area was estimated at approximately 12,000 in 2005, the area exhibits strong characteristics of a rural area. The population has increased only slightly since 1990. Kodiak's per capita income is less than many nonrural areas and also many rural areas. The unemployment rate has increased with the decline of the fishing industry. The community is very isolated with no road access. Inclement weather can strand residents for days. The per capita harvest of subsistence resources is higher in the Kodiak Area than in some other rural areas. Based on the marginal population growth since 1988 (1.3 percent), the high cost of food, remoteness, and the high use of subsistence resources, no change will be made to Kodiak's rural determination.

Ketchikan Area: The Board defined the Ketchikan Area to include Pennock Island, parts of Gravina Island, and the road system connected to the City of Ketchikan, including the community of Saxman. The Ketchikan Area, as defined, would retain its nonrural status. Saxman is directly adjacent to Ketchikan, connected by road, and surrounded by the outlying Ketchikan development. Visually, the only distinguishing feature to indicate the boundary between Ketchikan and Saxman is a sign on the South Tongass Highway. Saxman has clearly been overtaken and is surrounded by the geographic expansion of Ketchikan; Saxman students attend high school in Ketchikan; and 64 percent of the workers in Saxman commute to Ketchikan for their employment, with another 8 percent commuting to outlying parts of the area. Although a significant percentage of Saxman's population is Native, Ketchikan's Native population is approximately 10 times the size of Saxman's Native population. Many of the people testifying at the hearing in Saxman live in Ketchikan, but reported having very close family and cultural ties to Saxman. Given comments about the need for consistency of application of the criteria for grouping of communities, and the information on Saxman relative to those criteria, the Board grouped Saxman with the nonrural Ketchikan area.

The Remainder area fulfills all three criteria for grouping with the Ketchikan Area: (1) The Remainder, other than nearby Gravina and Pennock Islands which are connected by a very short skiff ride, is road-connected to the City of Ketchikan; (2) Students in the Remainder attend high school in Ketchikan; and (3) Over 30 percent of the workers from the Remainder commute to work in the City of Ketchikan. Presently, most of the Remainder is included in the nonrural Ketchikan Area, established in 1990. The Board action adds additional areas where development has occurred that is connected to the road system and additional parts of Gravina Island that are being developed. The Board action also treats any future developed areas connected to the road system the same as the existing road system.

The population of the Ketchikan Area was estimated at 13,125 in 2005 (including Saxman), having decreased slightly from 1990. Ketchikan possesses many nonrural characteristics, including having a 2-year college, a large national retailer, car dealerships, fast food restaurants, and roads linking the outlying surrounding area to the city. Ferry service is more dependable with greater frequency of service than in most other locations in Alaska. Although the pulp mill closed, there is still diversity in the economy, with tourism, fishing, fish processing, timber, dry docking services, retail services, and government providing the majority of employment. There is a hospital and a high diversity of services offered. The Ketchikan Area had the sixth highest population in the state in 2005, considering community groupings as defined by the Board. All other areas with higher populations are currently considered nonrural in Federal subsistence regulations. Three areas with smaller populations are currently classified as nonrural and are not being changed in status: the Homer Area, Seward Area, and Valdez. Harvest of subsistence resources in the Ketchikan Area is lower than is characteristic of rural communities.

This Board action changes the status of portions of the road-connected area of Ketchikan, including Saxman, and additional portions of Gravina Island from their current rural status to a nonrural status.

The revised list of nonrural communities and areas, including other nonrural communities or areas whose status would remain unchanged, is published herein as the final rule. All other communities and areas of Alaska not listed herein will retain their rural determination. We are amending § ____ .23, which identifies those communities and areas of Alaska that are determined to be rural and nonrural. We have made maps available for the nonrural areas. The purpose of these maps is to provide to the public a graphic representation of the extent of the nonrural areas. To view maps, go to the Office of Subsistence Management Web site at *http://alaska.fws.gov/asm/home.html*. If you do not have access to the internet, you may contact the Office of Subsistence Management at the address or phone number shown at **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT**, respectively, and we will send the maps to you.

The effective date of any community or area changing from a rural to nonrural status is 5 years after the date of publication of this final rule in the **Federal Register**. For communities or areas that change from nonrural to rural, the effective date is 30 days after the date of publication of this final rule in the **Federal Register**.

Because the Federal Subsistence Management Program relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, we are incorporating identical text into 36 CFR part 242 and 50 CFR part 100.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis, and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory

cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C, published May 29, 1992, implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. The following **Federal Register** documents pertain to this rulemaking:

FEDERAL REGISTER DOCUMENTS PERTAINING TO SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	"Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register** establishing a Federal Subsistence Management Program.
64 FR 1276	January 8, 1999	Final Rule (amended).	Amended 57 FR 22940 to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation. Specified and clarified Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	In response to comments on an interim rule, amended the operating regulations. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Received no adverse comments on 68 FR 7703. Adopted direct final rule.
68 FR 60957	October 14, 2004 ...	Final Rule	Established Regional Council membership goals.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised jurisdiction in marine waters in the Makhnati Island area near Sitka.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and therefore signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but that the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements described in the CFR regulations were approved by OMB under 44 U.S.C. 3501 and were assigned control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor and you are not required to respond to a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

Regulatory Planning and Review (E.O. 12866). In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. OMB makes the final determination of significance under Executive Order 12866.

a. Analysis indicates this rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the

environment, or other units of government. A full cost-benefit and economic analysis is not required. This rule revises the list of nonrural areas identified by the Federal Subsistence Board. Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska.

b. This rule will not create serious inconsistencies or otherwise interfere with the actions of other agencies.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule raises novel legal or policy issues. This rule raises a novel policy issue in that Federal subsistence regulations require that the rural/nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data, this thereby being the first such decennial review. Although the process uses data from the 2000 census for its review, some data was not compiled and available until 2005. Data from the Alaska Department of Labor were used to supplement the census data.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of regulatory flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, sporting goods dealers, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

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

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

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless the State program is compliant with the requirements of that Title.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

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

William Knauer drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Warren Eastland, and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons set out in the preamble, the Secretaries propose to amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

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

Subpart C—Board Determinations

■ 2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, revise § ____.23 to read as follows:

§ ____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § ____.15, except those set forth in this paragraph. You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service, Office of Subsistence Management. The nonrural areas include:

(1) Anchorage, Municipality of;

(2) Fairbanks North Star Borough;

(3) Homer area—including Homer, Anchor Point, North Fork Road area, Kachemak City, and the Fritz Creek East area (not including Voznesenka);

(4) Juneau area—including Juneau, West Juneau, and Douglas;

(5) Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifonsky, Kasilof, and Clam Gulch;

(6) Ketchikan area—including all parts of the road system connected to the City of Ketchikan including Saxman, Pennock Island and parts of Gravina Island;

(7) Prudhoe Bay;

(8) Seward area—including Seward and Moose Pass;

(9) Valdez; and

(10) Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, Point MacKenzie, and Bodenburg Butte.

(b) [Reserved]

Dated: April 26, 2007.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: April 26, 2007.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 07–2205 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2006–0184; FRL–8308–6]

RIN 2009–AA01

Source-Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico.

EFFECTIVE DATE: This rule is effective on June 6, 2007.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosen, EPA Region IX, (415) 947–4152, *rosen.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a docket for this action under Docket ID No. R09-OAR–2006–0184. All documents in the docket are listed in the Federal eRulemaking portal index at *http://www.regulations.gov* and are available either electronically at www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Background of the Final Rule

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity in excess of 2000 megawatts (MW).

In 1999, EPA initially proposed to promulgate a FIP to regulate emissions from FCPP. At that time, FCPP had historically achieved certain emissions limits which had been approved by EPA into the New Mexico SIP. See 40 CFR 52.1640. However, because the New Mexico SIP is not approved to apply on the Navajo Indian Reservation, and because the Navajo Nation did not have a federally applicable tribal implementation plan (TIP), EPA proposed to promulgate a FIP to remedy the existing regulatory gap. 64 FR 48731 (September 8, 1999) (1999 proposed FIP). The proposed FIP would have, in essence, federalized the requirements contained in the New Mexico SIP which FCPP had historically followed. In explaining the basis for its proposed action, EPA stated that given the magnitude of emissions from the plant, the Agency believed the proposed FIP provisions were necessary and appropriate to ensure the protection of air quality on the Reservation. 64 FR at 48733.

Before EPA took final action on the 1999 proposed FIP, a stakeholders group of environmental organizations (Environmental Defense, Western Resource Advocates, and New Mexico Citizens for Clean Air and Water), the National Park Service (NPS), and Arizona Public Service (APS), the operating agent for FCPP, convened to discuss the facility. The stakeholders group negotiated substantial additional sulfur dioxide (SO_2) emissions reductions which FCPP believed it could achieve by enhancing the efficiency of its existing SO_2 scrubbers. After testing the program, the Navajo Nation and the stakeholders group requested that EPA include these negotiated, additional SO_2 emissions reductions in the FIP. FCPP agreed to increase the amount of SO_2 emissions it was eliminating from its exhaust stream from 72% to 88%, thereby reducing its annual emissions of SO_2 to the atmosphere by about 25,000 tons per year.

EPA did not finalize the proposed 1999 FIP after the stakeholders group began negotiations. Instead, after the stakeholders group had finished its work, EPA proposed a new FIP in September, 2006. 71 FR 53631 (September 12, 2006) (2006 proposed FIP).

In the 2006 proposed FIP, EPA again explained that to remedy the regulatory gap that exists with regard to FCPP, the Agency was proposing to issue a source-specific FIP. EPA proposed to establish federally enforceable emission limits for SO_2, NO_X, PM, and opacity, and control measures for dust. For SO_2, the 2006 proposed FIP included a requirement for FCPP to comply with a significantly lower emission limit than the one set forth in the 1999 proposed FIP. For NO_X and PM emissions, EPA again proposed to federalize the emissions limits which FCPP has historically followed. In other words, the primary difference between EPA's 1999 proposed FIP and our 2006 proposed FIP is our inclusion of requirements for FCPP to comply with the more stringent SO_2 emissions limitation.

EPA's objective at this time in promulgating a FIP for FCPP is to remedy the existing regulatory gap described above. Today's action will make federally enforceable the emission limitations which FCPP has historically followed as well as ensuring that FCPP continues to significantly reduce its emissions of SO_2. This action will help to advance the goals of ensuring continued maintenance of the national ambient air quality standards and protecting visibility. Given the importance of these goals and the magnitude of emissions from the plant, EPA believes that making these limits federally enforceable is appropriate to protect air quality on the Reservation and is accordingly exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40

CFR 49.11(a) to promulgate a FIP containing provisions to achieve these ends.

II. Analysis of Major Issues Raised by Commenters

EPA received 43 comment letters on the proposal. The Navajo Nation EPA and one environmental organization provided comments in support of the proposed FIP. Other commenters raised concerns which focused on EPA's jurisdiction over FCPP and our exercise of FIP authority, general concerns about air quality and health in the Four Corners area, more specific comments about the emission limits and control requirements in the proposed FIP, and questions as to whether FCPP's SO_2 emissions reductions were close to or equivalent to that achievable through best available retrofit technology (BART).

EPA held a public informational workshop and public hearing on the proposed FIP in Farmington, New Mexico, on October 5, 2006. EPA received approximately 36 written and e-mail comments and 7 oral comments. Many of those commenting at the public hearing also submitted their comments in writing.

Our complete Response to Comments is contained in a separate document in the docket for this rulemaking. A summary of the significant comments and responses is provided below.

A. Jurisdictional and Authority Issues

Comment: Several commenters raised issues regarding EPA's authority to promulgate a FIP for FCPP. Some commenters stated that EPA does not have the authority to promulgate the proposed FIP because FCPP's ongoing compliance with the emissions limits in the New Mexico SIP means that there is no regulatory gap for EPA to fill.

Response: EPA's authority to promulgate a source-specific FIP is based on Clean Air Act (CAA) sections 301(a) and (d)(4) and the regulations implementing these provisions known as the Tribal Authority Rule (TAR) at 40 CFR Part 49. CAA section 301(d)(4) provides EPA with broad discretion to promulgate regulations directly for sources located in Indian country,[1] including on Indian reservations if we determine such Federal regulations are ''necessary or appropriate'' and the Tribe has not promulgated a TIP. Specifically, in 40 CFR 49.11, EPA interpreted CAA section 301(d)(4) to authorize EPA to promulgate ''such Federal implementation plan provisions as are necessary or appropriate to protect air quality.''

As explained in the 1999 and 2006 proposed FIPs, a regulatory gap exists with regard to FCPP. 64 FR at 43,955; 71 FR at 53,632. Although FCPP has historically followed the rules in the New Mexico SIP, EPA has not found that New Mexico had regulatory authority under the CAA on the Navajo Indian Reservation and has not approved the State's implementation plan for any area on the Reservation. It is EPA's position that, absent an explicit finding of jurisdiction and approval in Indian country, State and local governments lack authority under the CAA over air pollution sources, and the owners or operators of air pollution sources, throughout Indian country. See 63 FR 7254, 7259 (February 12, 1998) (responding to comment that EPA should '' 'grandfather' existing facility subject to state authority so that states continue to regulate those facilities until the affected parties all agree cooperatively to a transition from state to tribal jurisdiction''). Therefore, the New Mexico SIP does not apply to FCPP and there is a regulatory gap.

EPA is exercising its discretion to promulgate emission limitations for FCPP to close this regulatory gap in light of the magnitude of the emissions of NO_X, SO_2, and PM from FCPP. This FIP will help to ensure maintenance of the NAAQS and progress towards meeting the national visibility goal and help to maintain consistent standards on the Navajo Indian Reservation and its neighboring States.

The source-specific FIP published today is based on the same CAA authority that EPA has used elsewhere in rulemakings and that has been affirmed by the courts. EPA's interpretation of its authority in the TAR was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit in *Arizona Public Service Co.* v. *EPA,* 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied,* 121 S. Ct. 1600 (2001). That court also upheld EPA's authority to issue operating permits to major stationary sources located in Indian country under Title V of the CAA, pursuant to regulations at 40 CFR Part 71. *State of Michigan* v. *EPA,* 268 F.3d 1075 (D.C. Cir. 2001). In addition, in an unpublished opinion in December 2006, the Ninth Circuit Court of Appeals found that EPA's promulgation of a FIP establishing agricultural burning rules that applied to some, but not all reservations in the Northwestern United States was not arbitrary and capricious. *Safe Air for Everyone* v. *EPA,* No. 05–73383 (9th Cir., Dec. 8, 2005). A copy of the unpublished opinion is in our docket.

EPA has used its authority in CAA sections 301(a) and (d), as implemented through 40 CFR Part 49, to issue a number of FIPs to address air pollution concerns at specific facilities located in Indian country. *See, e.g.*, Federal Implementation Plan for Tri-Cities Landfill, Salt River Pima-Maricopa Indian Community, 40 CFR 49.22 (64 FR 65663 (November 23, 1999)); Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM_{10} Nonattainment Area, 40 CFR 49.10711 (65 FR 51412 (August 23, 2000).

Therefore, we disagree with those comments challenging EPA's authority to promulgate a FIP for FCPP.

B. Concerns About the Scope of the FIP

Comment: The overwhelming majority of commenters indicated that in issuing a FIP for FCPP, EPA should go beyond merely federalizing the emission limits which FCPP has historically followed. Most commenters raised concerns about poor air quality, deteriorating visibility and high rates of cancer, asthma, and other respiratory problems in the Four Corners area, and a number requested that EPA prohibit any emissions from the facility rather than merely federalizing the limits the facility has historically followed. Other commenters urged EPA to take regulatory action to regulate or to further reduce emissions of SO_2, NO_X, PM, mercury, and ''toxic emissions.'' Commenters raised a variety of general concerns regarding health impacts associated with FCPP, including the public health and/or environmental impacts of fugitive dust from coal mining, mercury (Hg) and carbon dioxide (CO_2, greenhouse gases). Another commenter argued that in issuing a FIP for FCPP, EPA must comply not only with the requirements of section 301 of the CAA but also ensure through the FIP process that FCPP is in compliance with all applicable federal and state ambient standards by complying with the requirements of section 110 of the CAA addressing State implementation plans.

[1] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

Response: EPA is taking action to close the regulatory gap that exists with respect to FCPP. As explained above, at present there is not currently an approved implementation plan covering FCPP. EPA's exercise of authority in issuing this FIP is based on the Agency's conclusion that it is appropriate to protect air quality on the Reservation by remedying the lack of federally enforceable limits applicable to this facility. As such, our action is limited to making enforceable those emissions limits which FCPP has historically followed, or in the case of SO_2, an emission limit FCPP has achieved following a successful test program to determine if the existing scrubbers at FCPP could be improved.

Today's action is an important step in protecting air quality on the Reservation. As noted in the proposal, this action will contribute towards ensuring continued maintenance of the NAAQS and towards protecting visibility. EPA acknowledges that additional regulatory actions by EPA may be necessary or appropriate in the future to further protect air quality on the Navajo Reservation, depending on, among other things, conditions on the Reservation and the decisions of the Navajo Nation to exercise its discretionary authority under the CAA.

C. Comments on Emissions Limits

1. Comments on Emissions Limits for Pollutants Other Than SO_2

Comment: Several commenters urged EPA to take regulatory action in addition to the proposed FIP to require reductions of NO_X and PM emissions from FCPP. In particular, several commenters urged EPA to undertake a BART determination for FCPP's NO_X emissions.

Response: EPA agrees that it may be necessary or appropriate in a future rulemaking to require FCPP to reduce its NO_X or PM emissions below those levels which were historically contained in the New Mexico SIP or which are necessary to comply with the Acid Rain program. Today's rule, however, does not address the requirements of EPA's nationally applicable Regional Haze rule, codified at 40 CFR 51.308, which contains specific implementation plan requirements regarding BART determinations.[2]

EPA intends to apply any requirements for FCPP to achieve a reduction in its NO_X or PM emissions in a separate rulemaking. EPA will begin gathering information from FCPP to determine what measures, if any, are appropriate for the facility to implement to reduce its NO_X and PM emissions to comply with the Regional Haze Rule's requirements for BART.

2. Comments on Emission Limit for SO_2

Comment: A number of commenters requested EPA to promulgate a FIP that would require FCPP to reduce its SO_2 emissions to greater than 88% SO_2 removal from the exhaust gas. Some comments questioned the method which EPA specified FCPP should use to determine how much SO_2 was being removed or that removal efficiency should be determined by SO_2 CEMs located before and after the scrubber. The commenters noted that FCPP should not be able to count as ''removed'' sulfur that is retained in bottom and flyash.

Response: The removal efficiency that FCPP historically met (72%) and the increased efficiency required in this FIP (88%) are based on comparison of the percentage of sulfur in the coal that FCPP is combusting and the outlet concentration of sulfur expressed as SO_2. The commenters are correct that some of the sulfur is retained in bottom and flyash. However, comparing coal sampling for sulfur content to the SO_2 emitted at the stacks remains the most technically appropriate method of demonstrating compliance. FCPP uses a coal sampling tower that meets American Society of Testing and Materials (ASTM) specifications for obtaining a representative sample of the coal for sulfur analysis prior to combustion.

EPA agrees with one commenter that the regulatory language establishing the 88% removal efficiency should be clarified in the final FIP. Instead of stating the limit as ''12 percent of that which is produced by the coal burning equipment * * * '', EPA will change the FIP to reflect that the SO_2 limit is based on limiting emissions to 12% of the sulfur in the coal.

3. Comments on Whether FCPP's 88% Reduction of SO_2 Emissions Is Close to or Equivalent to BART

Comment: EPA received several comments regarding our statement in the preamble to the 2006 proposed FIP that ''EPA believes that the SO_2 controls proposed today for FCPP are close to or the equivalent of a regional haze BART determination for SO_2. This takes into consideration the early reductions that this action will achieve and the modifications to the existing SO_2 scrubbers.'' One commenter called upon EPA to conduct a full SO_2 BART analysis before taking final action. Another commenter disagreed with our statement that 88% control of SO_2 for FCPP is ''close to or the equivalent of'' BART and called upon EPA to require FCPP to meet what it characterized as the applicable presumptive BART requirement. In contrast, other comments supported EPA's statement or echoed the importance of achieving SO_2 emissions reductions from FCPP now rather than on the schedule anticipated for BART determinations.

Response: EPA is not making a BART determination for FCPP today. As noted in the preamble to the proposed FIP, the level of control in the FIP for FCPP is ''close to or the equivalent'' of BART for this source. EPA agrees that if the Agency were to undertake a case-by-case BART analysis, BART could potentially be determined to be a greater level of control than 88% SO_2 removal.[3] However, any case-by-case BART analysis would be subject to the timeframes needed to implement such controls. As explained above, under the TAR, EPA has the discretion to promulgate FIPs, as necessary or appropriate, within reasonable timeframes to protect air quality in Indian country. Id. In today's rulemaking EPA is exercising its discretion under 40 CFR 49.11 to find that it is neither necessary or appropriate at this time to undertake a BART determination for SO_2 for FCPP given the timing of the substantial SO_2 reductions resulting from this FIP. Moreover, as explained in the preamble to the 2006 proposed FIP, there are only two major sources of SO_2 on the Navajo Reservation that are potentially subject to the BART requirements—Navajo Generating Station and FCPP. 71 FR at 53632. EPA determined previously that the SO_2 emission limits in the 1991 FIP for the Navajo Generating Station provide for greater reasonable progress toward the national visibility goal than would BART. 71 FR at 53633. As explained above, given that the SO_2

[2] Such implementation plans are not required from the States until December 17, $2007_{[0]}$. Tribes are not subject to any mandatory deadlines to submit regional have implementation plans. See 40 CFR 49.7(c); 64 FR at 35758 (''For example, unlike States, tribes are not required by the TAR to adopt and implement CAA plans or programs, thus tribes are not subject to mandatory deadlines for submittal of implementation plans.''

[3] EPA disagrees with the comment that the BART Guidelines, 70 FR 39104, 39171 (July 6, 2005) established a presumption that BART at FCPP is 95% control for SO_2. Although the BART Guidelines did establish a presumption of either 95% control for SO_2 or 0.15 lbs/MMBtu for large power plants, this presumption applies only to power plants that are currently uncontrolled or achieving less than 50% control of SO_2. *Id.* As indicated in the preamble to the proposed FIP, this presumption thus does not apply to power plants, such as FCPP, with existing SO_2 controls achieving at least 50% removal efficiency. 71 FR at 53633; *see also* 70 FR at 39171.

controls for FCPP immediately achieve significant reductions in SO_2 comparable to what could ultimately be achieved through a formal BART determination, EPA believes that it will not be necessary or appropriate to develop a regional haze plan to address SO_2 for the Navajo Nation in the near term.

The Navajo Nation EPA has specifically requested EPA to take this action, and in doing so stated: ''Given the results of the APS study, the Navajo Nation agrees that an 88% SO_2 removal rate for SO_2 at Four Corners Power Plant appears to be equivalent to BART, especially taking into account the early reductions that will be achieved.'' Letter from Stephen Etsitty, to Deborah Jordan, dated December 6, 2005. EPA generally agrees with the Navajo Nation's assessment and has, therefore, taken this step in regulating emissions on the Navajo Nation reservation.

4. Comments on Opacity Emission Limits

Comment: One commenter objected to the lack of a 20% opacity standard for Units 1, 2, and 3. Other comments objected to the FIP's exemption of water vapor from the 20% opacity standard on Units 4 and 5 and also criticized exempting the Units from compliance with the opacity limit during startup and shutdown when the units dropped below 300 MW. In contrast, another commenter stated that the opacity requirements on these units are overly restrictive, especially as they pertain to periods of malfunction.

Response: Opacity limits are generally applied to ensure a source is meeting its PM emissions limit. For Units 1, 2, and 3, however, an opacity limit (coupled with a continuous opacity monitors (COMS)) would not be an appropriate method for ensuring compliance with the PM emissions limits for these units. This is because Units 1, 2, and 3 use venturi scrubbers to reduce PM emissions; due to interference from steam in the exhaust, COMS can not be used to monitor opacity on these stacks. Given this, EPA finds that the use of opacity limits to ensure that FCPP is meeting its PM emissions limits is not appropriate for these units. EPA continues to find, and is finalizing in today's action, that parametric monitoring of each venturi scrubber is the best method of assuring proper operation to minimize the emissions of PM.

Units 4 and 5 have always operated with an exemption from opacity limits during shutdown. The commenter has not provided any information demonstrating that exempting these units during shutdown harms the environment or public health.

With regards to comments requesting an exemption from the opacity limit during malfunctions, EPA has explained below its reasons for providing an affirmative defense for these periods. With regards to the comment on the phrasing for exempting water vapor, EPA agrees that this should be changed to uncombined water droplets. With respect to the commenter requesting a demonstration that the opacity was caused by uncombined water droplets, EPA believes this is not necessary. The opacity limit for this facility is set to assure proper operation of the baghouse. The rule will require that the facility assure that there has been no bypass through the bypass damper during these periods of assumed water droplet interference. The facility will be required to report these as apparent excess emissions in their quarterly excess emissions report. If anything inappropriate shows up in the reports, EPA can follow up to get better clarification of the issue.

D. Comments on Control Requirements

Comment: One commenter was concerned that the heat input for the FCPP Plant may have increased over a number of years as indicated from the ''EPA Acid Rain Scorecard'' and wanted to know if this increase constituted a major modification triggering permitting.

Response: EPA is undertaking this rulemaking pursuant to our rulemaking authority established in CAA sections 301(a) and 301(d) to promulgate source-specific FIPs in Indian Country. EPA is not addressing in today's action the status of this source with respect to any need for major source permitting or whether or not a modification had occurred at the plant.

We do note that changes in the heat input reflected by the ''EPA Acid Rain Scorecard'' do not necessarily indicate that an electric generating unit (EGU) has made a major modification. For example, the methodology for determining heat input to EGUs used in the Scorecard changed with the 1995 data. For the years before this, the Scorecard relied on coal consumption data provided to the EIA, while from 1995 on it was determined by flow measurements in the stack and calculated based on 40 CFR Part 60, Appendix A, Method 19.

Comment: One commenter questions whether or not the current method of flyash disposal is safe.

Response: The only regulatory action in this rule regarding flyash addresses the generation of dust while handling the flyash on site. The rule is imposing a 20% opacity limit on transfer points for flyash. This will cover the ash that is being sold for use as an additive to cement and the process for mixing of flyash and scrubber sludge for disposal at the mines. This regulation does not evaluate or control the method of disposal at the mine.

Comment: One commenter questions whether or not the facility was ever exempted from opacity monitoring as required and then eligible for exemption under 40 CFR 75.10(a) and 40 CFR 75.14(b), respectively.

Response: EPA is not aware that there was any specific exemption requested or granted to this facility. However, EPA has had extensive experience inspecting and negotiating with this plant since the early 1990's. EPA has been aware that even to the extent FCPP has followed the New Mexico rules, the three venturi scrubbed units (1, 2, and 3) have had no opacity limit and no opacity monitoring in the stacks. These units have venturi scrubbers that cannot be bypassed while the unit is in operation and the stacks have an exhaust gas stream that is always saturated. If a specific exemption was required, EPA would grant it for these three units upon request by the facility.

Comment: APS has commented that parametric monitoring should not be required by this rule, but that EPA should wait until Compliance Assurance Monitoring (CAM) is required by the facility's Title V permit. The commenter goes on to say if parametric monitoring is required that there should be a six month schedule for installation and shakedown of the equipment.

Response: EPA disagrees with the comment that EPA should wait to require the parametric monitoring under CAM. EPA believes that newly created applicable requirements, such as the emissions limitations in the FCPP FIP, should establish adequate monitoring, recordkeeping, and reporting that will assure compliance. It would not be appropriate to establish new applicable requirements (in the form of FCPP FIP requirements) that lack compliance-assuring monitoring, recordkeeping, and reporting requirements. Therefore, FCPP should establish parametric monitoring, and recordkeeping and reporting requirements, in conjunction with this source-specific FIP rule.

CAM is designed as a gap filling mechanism where the parametric monitoring required for an applicable requirement is insufficient to ensure compliance. All rules, such as the FCPP FIP, should have sufficient monitoring to assure compliance rather than rely on

the gap filling anticipated by CAM. EPA believes that the parametric monitoring is the most appropriate method to assure continuous compliance with the PM limits in this rule for Units 1, 2, and 3. EPA concurs that FCPP should be allowed a six month period to comply with this requirement and the final regulatory language reflects this.

Comment: FCPP commented that its emissions during startup, shutdown and malfunction events should be exempt from the emissions limits, and therefore not considered violations, rather than subject to an affirmative defense for penalties.

Response: EPA acknowledges the New Mexico SIP contained an exemption for these emissions. However, in our 1999 proposed FIP, EPA recognized that the New Mexico SIP's exemption of startup, shutdown and malfunction emissions from FCPP was in error. The 1999 proposed FIP contained a provision similar to the affirmative defense provision in the 2006 proposed FIP for malfunction events and alternate emissions limits for startup.

EPA has set forth its position on numerous occasions stating that emissions during startup, shutdown and malfunction events are considered violations of the underlying emissions limitations. For startup and shutdown events, EPA may set alternate limits where it is technically infeasible for the equipment to meet the emissions limit for a defined period of time. Such alternate startup and shutdown limits are not exemptions. For excess emissions resulting from malfunctions, EPA's longstanding position, as reflected in numerous policy documents and rulemakings, is that those emissions are violations of the underlying requirement but that the regulatory agency may provide that the violator may assert an affirmative defense to a claim for penalties based on the affirmative defense language such as we proposed.

FCPP's arguments on the issue, which are legal rather than technical, boil down to: (1) The CAA should only require excess malfunction emissions to be violations if those emissions would cause a violation of the NAAQS, (2) it is unfair to find a violation where the emissions are sudden and unavoidable, (3) the requirement to take all steps and to do everything possible renders the affirmative defense provision a ''nullity,'' and (4) the provision improperly usurps the judicial function of establishing the burden of proof. In response to the first point, the CAA contains numerous requirements that cannot be directly correlated with an exceedance of the NAAQS. (See, *e.g.* 40 U.S.C. 7410(a)(2) (requirements for SIPs).) Furthermore, NAAQS violations are rarely based on emissions from just one source, but rather from emissions from several or many sources. As to FCPP's second point, EPA agrees that penalties may not be appropriate where a malfunction was beyond the source's control and the source has taken all necessary actions to minimize emissions during the malfunction and to quickly remedy the problem. However, EPA does not agree that it is unfair to allow for claims for injunctive relief where a malfunction has occurred. The criteria ensure that these conditions are met before a source may be relieved from paying penalties while also allowing for claims for injunctive relief to proceed. On the third point, we disagree. The criteria represent reasonable mechanisms that sources should have in place to minimize and mitigate any adverse effects from malfunctions. For the fourth point, we are unclear what the commenter means by saying the defense ''usurps the judicial function of establishing burden of proof.'' However, we think that each party bears the appropriate burden in any enforcement case. The party seeking to enforce a claim bears that burden of proving that excess emissions occurred to establish a violation. FCPP may raise as a defense to penalties that the violation was unavoidable and FCPP took appropriate preventive and corrective action. The court retains its function of determining whether each party has met its burden. Therefore, EPA is finalizing the language proposed in the FIP allowing an affirmative defense for excess emissions resulting from malfunctions.

Comment: FCPP also commented that the FIP should not become effective until 18 months following promulgation because EPA's 2006 proposed FIP contained a new 20% opacity requirement for certain dust-generating activities.

Response: EPA agrees that FCPP may have 18 months to develop the necessary controls to ensure it does not exceed 20% opacity from its dust generating activities. EPA also agrees that FCPP may have the requested additional time to develop a parametric monitoring plan and to install CEMS and collect adequate data to demonstrate compliance with the SO2 emission limit.

Comment: FCPP commented that it did not agree with EPA's option in the proposed preamble to impose a 40% opacity limit for Units 1, 2, and 3.

Response: EPA agrees for the reasons discussed above concerning why EPA will not impose a 20% opacity limit on Units 1, 2, and 3.

III. Administrative Requirements

A. Executive Order 12866

Regulatory Planning and Review

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all ''regulatory actions'' that are ''significant'' are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A ''regulatory action'' is defined as ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking.'' A ''regulation or rule'' is defined as ''an agency statement of general applicability and future effect,* * *''

The FIP is a ''significant regulatory action'' because it raises novel legal or policy issues. Nevertheless, after reviewing information regarding this action, the Office of Management and Budget waived review of this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the FIP applies to a single facility, FCPP, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

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; 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The FIP for FCPP being finalized today does not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985)

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 04–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain ''federal mandates'' that may 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 one year. If UMRA section 202 requires a written statement, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under UMRA section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Regional Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. UMRA section 204 requires EPA to develop a process to allow elected officers of State, local, and Tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the final FIP contains no Federal mandates on State, local or Tribal governments, because it will not impose any additional enforceable duties on any of these entities. EPA further has determined that the final FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Although the final FIP imposes enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, UMRA sections 202, 204, and 205 do not apply to the final FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of UMRA section 203 do not apply to the final FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's action.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000), requires EPA to develop ''an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Under Executive Order 13175, to the extent practicable and permitted by law, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. In addition, to the extent practicable and permitted by law, EPA may not issue a regulation that has tribal

implications and pre-empts tribal law unless EPA consults with tribal officials early in the process of developing the proposed regulation and prepares a tribal summary impact statement.

EPA has concluded that this final rule may have tribal implications because it will impose federally enforceable emissions limitation on a major stationary source located and operating on the Navajo reservation. However, this final rule will neither impose substantial direct compliance costs on tribal governments nor pre-empt Tribal law because the final FIP imposes obligations only on the owner or operator of FCPP.

EPA has also consulted extensively with officials of the Navajo Nation in the process of developing this regulation. EPA had discussions with Tribal representatives during proposal of the FIP in 1999. By letter dated December 5, 2005, the Navajo Nation EPA supported the action taken in this FIP. Tribal officials attended the public information workshop and public hearing on the proposed FIP. Therefore, EPA has allowed Navajo Nation to provide meaningful and timely input into development of this FIP.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 104–113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurement of the sulfur in the coal for calculating the efficiency of the SO_2 scrubbers for FCCP, EPA proposes to require use of ASTM standards. FCCP would have the ability to choose an applicable ASTM standard for both the coal sample collection and the sulfur in coal analysis.

In regard to the remaining measurement needs as listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR Part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 though 5

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring

SO_2—EPA Method 6C and Performance Specification 2 for Continuous SO_2 Monitoring

NO_X—EPA Method 7E and Performance Specification 2 for Continuous NO_X Monitoring.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it strengthens the level of protection provided to human health or the environment. This final rule requires emissions reductions and makes emissions limitations federally enforceable for a major stationary source.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective June 6, 2007.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b) (2)).

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 2007.

Stephen Johnson,

Administrator.

■ Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 49—[AMENDED]

■ 1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Section 49.23 is added to read as follows:

§ 49.23 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant (the Plant) on the Navajo Nation Indian Reservation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon the effective date of this rule unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(2) *Air pollution control equipment* includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

(3) *Business Day.* Business day means a normal working day, excluding weekends and Federal Holidays.

(4) *Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

(5) *Excess emissions* means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(6) *Heat input* means heat derived from combustion of fuel in a Unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be in accordance with 40 CFR Part 75.

(7) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(8) *Owner or Operator* means any person who owns, leases, operates, controls, or supervises the Plant or any of the coal burning equipment designated as Units 1, 2, 3, 4, or 5 at the Plant.

(9) *Oxides of nitrogen (NO_X)* means the sum of nitric oxide *(NO)* and nitrogen dioxide (NO_2) in the flue gas, expressed as nitrogen dioxide.

(10) *Plant-wide basis* means total stack emissions of any particular pollutant from all coal burning equipment at the Plant.

(11) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency (EPA) Region 9 or his/her authorized representative.

(12) *Shutdown* means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, shutdown begins when the unit drops below 40 MW net load with the intent to remove the unit from service. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(13) *Startup* means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, startup ends when the unit reaches 40 MW net load. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

(14) *24-hour period* means the period of time between 12:01 a.m. and 12 midnight.

(d) *Emissions Standards and Control Measures*—(1) *Sulfur Dioxide.* No owner or operator shall discharge or cause the discharge of sulfur dioxide (SO_2) into the atmosphere in excess of:

(i) 12.0 percent of the potential combustion concentration assuming all of the sulfur in the coal is converted to SO_2. This percent emitted is determined by a daily calculation of the plantwide heatinput weighted annual average.

(ii) 17,900 pounds of total SO_2 emissions per hour averaged over any consecutive three (3) hour period, determined on a plant-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the atmosphere in excess of 0.050 pounds per million British thermal unit (lb/MMBtu) of heat input (higher heating value), as averaged from three sampling runs, each at 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

(3) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of this section, the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, flyash handling and storage, and road sweeping activities. Within 548 days of promulgation of this section each owner or operator shall not emit dust with an opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

(4) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20% opacity, excluding uncombined water droplets, averaged over any six (6) minute period, except for one six (6) minute period per hour of not more than 27% opacity.

(5) *Oxides of nitrogen.* No owner or operator shall discharge or cause the discharge of NO_X into the atmosphere.

(i) From either Unit 1 or 2 in excess of 0.85 lb/MMBtu of heat input per unit, and from either Units 3, 4, or 5 in excess of 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating day period;

(ii) In excess of 335,000 lb per 24-hour period when coal burning equipment is operating, on a plant-wide basis; for each hour when coal burning equipment

is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) *Testing and Monitoring.* Upon completion of the installation of continuous emissions monitoring systems (CEMS) software as required in this section, compliance with the emissions limits set for SO2 and NO_X shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section. Compliance with the emissions limit set for particulate matter shall be tested annually, or at such other time as requested by the Regional Administrator, based on data from testing conducted in accordance with 40 CFR part 60, appendix A, Methods 1 through 5, or any other method receiving prior approval from the Regional Administrator. Compliance with the emissions limits set for opacity shall be determined by using data from a Continuous Opacity Monitoring System (COMS) except during saturated stack conditions (uncombined water droplets). If the baghouse is operating within its normal operating parameters, the baghouse is not fully closed, and a high opacity reading occurs, it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered a violation.

(1) The owner or operator shall maintain and operate CEMS for SO2, NO or NO_X, a diluent and, for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and appendix B of 40 CFR part 60. Within six (6) months of promulgation of this section, the owner or operator shall install CEMS and COMS software which complies with the requirements of this section. The owner or operator of the Plant may petition the Regional Administrator for extension of the six (6) month period for good cause shown. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required thereunder shall be submitted to the Regional Administrator. The owner or operator shall provide the Regional Administrator notice in accordance with 40 CFR 75.61.

(2) *Sulfur Dioxide.* For the purpose of determining compliance with this section, the sulfur dioxide inlet concentration (in lb/MMBtu) shall be calculated using the daily average percent sulfur and Btu content of the coal combusted. The inlet sulfur concentration and Btu content shall be determined in accordance with American Society for Testing and Materials (ASTM) methods or any other method receiving prior approval from the Regional Administrator. A daily fuel sample shall be collected using the coal sampling tower conforming to the ASTM specifications. The analyses shall be done on the daily sample using ASTM methods or any other method receiving prior approval from the Regional Administrator.

(i) The inlet sulfur dioxide concentration shall be calculated using the following formula:

$I_s = 2(\%S_f)/GCV \times 10^4$ English units

Where:

I_s = sulfur dioxide inlet concentrations in pounds per million Btu;
$\%S_f$ = weight
percent sulfur content of the fuel; and
GCV = Gross calorific value for the fuel in Btu per pound.

(ii) The total pounds of SO_2 generated by burning the coal shall be calculated by multiplying the SO_2 inlet concentration by the daily total heat input determined by the 40 CFR Part 75 acid rain monitoring. This will determine the pounds of SO_2 produced per day. The SO_2 emitted from the stacks shall be determined by adding the daily SO_2 emissions from each stack as determined by the 40 CFR Part 75 acid rain monitors. Compliance with the emission limit shall be determined for each day by adding that day's SO_2 emissions and that day's SO_2 produced to the previous 364 days and then dividing the 365 days of emissions by the 365 days of SO_2 produced. Compliance is demonstrated if this fraction, converted to a percent, is equal to or less than 12.0 percent. The data from the 40 CFR Part 75 monitors shall not be bias adjusted. If a valid SO_2 pounds per hour or heat input is not available for any hour for a unit, that heat input and SO_2 pounds per hour shall not be used in the calculation of the annual plant-wide average.

(3) *Particulate Matter.* Particulate matter emissions shall be determined by averaging the results of three test runs. Each test run shall be sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet. Within six (6) months of promulgation of this section, particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90 percent of maximum operation in accordance with 40 CFR 60.8 and Appendix A to 40 CFR Part 60. The owner or operator shall submit written notice of the date of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Region 9 Enforcement Office, and the notice is provided as soon as practicable after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Region 9 Enforcement Office) in advance of the new date of testing.

(4) *Oxides of nitrogen.* The total daily plant-wide oxides of nitrogen emissions in pounds of NO_2 per day shall be calculated using the following formula:

$$TE = \sum_{i=1}^{n} \sum_{j=1}^{m} \left(E_{ij} \times H_{ij} \right)$$

Where:

TE = total plant-wide nitrogen dioxide emissions (lb NO_2/day);
E_{ij} = hourly average emissions rate of each unit (lb NO_2/MMBtu);
H_{ij} = hourly total heat input for each unit (MMBtu);
n = the number of units of coal burning equipment operating during the hour;
m = the number of operating hours in a day, from midnight to midnight.

(5) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2, NO_X, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 pounds per hour, NO_2 pounds per hour, or NO_2 pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be

obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days. If a parameter essential for determining either the SO_2 pound per hour or the heat input is not valid or unavailable, that hour for that unit shall not be used in calculating the percent emissions of SO_2 for the plant-wide limit. The necessary software for determining compliance with the SO_2 plantwide annual average shall be installed and operating within 180 days of the effective date of this rule. The first day for determining compliance with the plantwide SO_2 limit shall be 365 days after the successful installation of the software.

(6) The owner or operator shall maintain a set of opacity filters to be used as audit standards.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under Section 114 of the Clean Air Act, 42 U.S.C. 7414, and enforce against any violation.

(8) In order to provide reasonable assurance that the scrubbers for control of particulate matter from Units 1, 2, and 3 are being maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions, the owner or operator shall comply with the following provisions:

(i) The owner or operator shall develop a plan to monitor, record, and report parameter(s) indicative of the proper operation of the scrubbers to provide a reasonable assurance of compliance with the particulate matter limits in paragraph (d)(2) of this section. The owner or operator shall submit this plan to the Regional Administrator no later than sixty (60) days after the effective date of this FIP. The owner or operator shall implement this plan within 90 days of approval by the Regional Administrator and shall commence reporting the data generated pursuant to the monitoring plan in accordance with the schedule in paragraph (e)(8)(v) of this section. If requested by the Regional Administrator, this plan shall be revised and submitted to the Regional Administrator for approval within sixty (60) days of the request. The revised plan shall be implemented within sixty (60) days of the Regional Administrator's approval.

(ii) In the event that the owner or operator is unable to develop the plan required in paragraph (e)(8)(i) of this section due to technical difficulties, fails to submit the plan within sixty (60) days of the effective date of this FIP, or the Regional Administrator disapproves the plan, the owner or operator shall install and operate devices to measure the pressure drop across each scrubber module and the total flow of scrubbing liquid to the venturi section of each scrubber module. The data from these instruments shall be monitored and recorded electronically. A minimum of one reading every 15 minutes shall be used to calculate an hourly average which shall be recorded and stored for at least a five-year period. The owner or operator shall report in an electronic format either all hourly data, or one-hour averages deviating by more than 30 percent from the levels measured during the last particulate matter stack test that demonstrated compliance with the limit in this section. The owner or operator shall implement this requirement no later than one hundred eighty (180) days after the effective date of this FIP if it failed to submit the plan within sixty (60) days after the effective date of this FIP; or no later than 60 days after the Regional Administrator's disapproval of the plan.

(iii) The monitoring required under paragraphs (e)(8)(i) and (e)(8)(ii) of this section shall apply to each Unit at all times that the Unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(iv) The owner or operator may petition the Regional Administrator for an extension of the sixty (60) day deadline. Such extension shall be granted only if the owner or operator demonstrates to the satisfaction of the Regional Administrator that:

(A) The delay is due to technical infeasibility beyond the control of the owner or operator; and

(B) The requested extension, if granted, will allow the owner or operator to successfully complete the plan.

(v) The owner or operator shall submit to the Regional Administrator reports of the monitoring data required by this section semi-annually. The reports shall be postmarked within 30 days of the end of each calendar quarter.

(vi) The owner or operator shall develop and document a quality assurance program for the monitoring and recording instrumentation. This program shall be updated or improved as requested by the Regional Administrator.

(vii) In the event that a program for parameter monitoring on Units 1, 2, and 3 is approved pursuant to the Compliance Assurance Monitoring rule, 40 CFR Part 64, such program will supersede the provisions contained in paragraph (e)(8) of this section.

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871–7692, (928) 871–7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR–5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3990, (415) 947–3579 (facsimile). For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS and COMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this section, comply with the notification and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d). For Units 4 and 5, periods of excess opacity due to water droplets shall be reported in the summary report required by 40 CFR 60.7(d).

(2) For each day, provide the 365 day percent SO_2 emitted, the total SO_2 emitted that day, and the total SO_2 produced that day. For any hours on any unit where data for SO_2 hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(3) Furnish the Regional Administrator with reports describing the results of the annual particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

(i) The test date;

(ii) The test method;

(iii) Identification of the coal burning equipment tested;

(iv) Values for stack pressure, temperature, moisture, and distribution of velocity heads;

(v) Average heat input;

(vi) Emissions data, identified by sample number, and expressed in pounds per MMBtu;

(vii) Arithmetic average of sample data expressed in pounds per MMBtu; and

(viii) A description of any variances from the test method.

(4) *Excess Emissions Report.* (i) For excess emissions (except in the case of saturated stack conditions), the owner or operator shall notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day (initial notification). A complete written report of the incident shall be submitted to the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator within ten (10) working days of the initial notification. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871–7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency, by mail to the attention of Mail Code: AIR–5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947–3579 (facsimile), or by e-mail to: *r9.aeo@epa.gov.* The complete written report shall include:

(A) The name and title of the person reporting;

(B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;

(C) The time and duration or expected duration of the excess emissions;

(D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;

(F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20 percent for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements. For this reporting requirement, excess opacity due to saturated stack conditions is exempted.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Regional Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of startup and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment or of a process to operate in a normal or usual manner;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were taken in an expeditious fashion to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[FR Doc. E7–8530 Filed 5–4–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070227048–7091–02; I.D. 020807C]

RIN 0648–AU63

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2007

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

ACTION: Temporary rule; specifications.

SUMMARY: The following Total Allowable Catches (TACs) in the United States (U.S.)/Canada Management Area are implemented for the 2007 fishing year (FY): 494 mt of Georges Bank (GB) cod, 6,270 mt of GB haddock, and 900 mt of yellowtail flounder. This action is intended to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act. These TACs may be adjusted during FY 2007, if NMFS determines that the harvest of these stocks in FY 2006 exceeded the TACs specified for FY 2006.

DATES: This rule is effective May 3, 2007, through April 30, 2008.

ADDRESSES: Copies of the Transboundary Management Guidance Committee's (TMGC) 2006 Guidance Document and copies of the Environmental Assessment (EA) of the 2007 TACs (including the Regulatory Impact Review and Final Regulatory Flexibility Analysis (FRFA)) may be obtained from NMFS at One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281–9315. NMFS prepared a summary of the FRFA, which is contained in the Classification section of this rule.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, (978) 281–9273, fax (978) 281–9135, e-mail *Tobey.Curtis@NOAA.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on March 12, 2007, (72 FR 10967) with public comments accepted though April 11, 2006. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 1,900 mt. The U.S. is entitled to 26 percent and Canada to 74 percent, resulting in a national quota of 494 mt of cod for the U.S. and 1,406 mt of cod for Canada. For GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 19,000 mt. The U.S. is entitled to 33 percent and Canada to 67 percent, resulting in a national quota of 6,270 mt of haddock for the U.S. and 12,730 mt of haddock for Canada. For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 1,250 mt. The U.S. is entitled to 72 percent and Canada to 28 percent, resulting in a national quota of 900 mt of yellowtail flounder for the U.S. and 350 mt of yellowtail flounder for Canada. On November 16, 2006, the New England Fishery Management Council (Council) approved, consistent with the 2006 Guidance Document, the following U.S. TACs recommended by the TMGC and recommended their adoption to NMFS: 494 mt of GB cod, 6,270 mt of GB haddock, and 900 mt of GB yellowtail flounder (Table 1). The 2007 haddock and yellowtail flounder TACs represent a decrease from 2006 TAC levels, and the 2007 cod TAC represents an increase from the 2006 TAC (Tables 1 and 2).

TABLE 1: 2007 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,900	19,000	1,250
U.S. TAC	494 (26)	6,270 (33)	900 (72)
Canada TAC	1,406 (74)	12,730 (67)	350 (28)

TABLE 2: 2006 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,700	22,000	3,000
U.S. TAC	374 (22)	7,480 (34)	2,070 (69)
Canada TAC	1,326 (78)	14,520 (66)	930 (31)

The 2007 TACs are based upon stock assessments conducted in July 2006 by the Transboundary Resource Assessment Committee (TRAC). The TACs are consistent with the results of the TRAC and the TMGC's harvest strategy.

The regulations for the U.S./Canada Management Understanding, implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: ''Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.'' Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2006, the pertinent TAC will be adjusted downward in order to be consistent with the regulations. Although it is very unlikely, it is possible that a very large overage could result in an adjusted TAC of zero. If an adjustment to one of the 2007 TACs for cod, haddock, or yellowtail flounder is necessary, the public will be notified through publication in the **Federal Register** and through a letter to permit holders.

Comments and Responses

No comments relevant to the proposed rule were received by the close of business on April 11, 2007.

Classification

NMFS has determined that this final rule is consistent with the FMP and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. No comments on the economic impacts of the TACs were received.

The specification of hard TACs for the U.S./Canada shared stocks of Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder is necessary in order to ensure that the fishing mortality levels for these shared stocks are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A full description of the objectives and legal basis for the TACs is contained in the preamble of the proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

The specification of hard TACs is necessary in order to ensure that the agreed upon U.S./Canada fishing mortality levels for these shared stocks of fish are achieved in the U.S./Canada Management Area. A description of the objectives and legal basis for these TACs is contained in the SUMMARY of the proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities ($3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no differential impacts between large and small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the TACs is approximately 1,000 vessels, i.e., those with limited access NE multispecies days-at-sea (DAS) permits that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore would be subject to the associated restrictions, including hard TACs, would be substantially less.

From May 2005 through April 2006 (i.e., FY 2005), 184 individual NE multispecies DAS vessels fished in the U.S./Canada Management Area. Because the regulatory regime in FY 2007 will be similar to that in place in FY 2005, it is likely that the number of vessels that choose to fish in the area during FY 2007 will be similar to the number of vessels that fished in the area during FY 2005.

The economic impacts of these TACs are difficult to predict due to several factors, but are based on the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the relative newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there are relatively few historic data, and little is known about the specific fishing patterns or market impacts that may be caused by this hard TAC management system. In general, the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Management Area and the rate at which cod is caught in the Eastern U.S./Canada Area will determine the length of time the Eastern U.S./Canada Area will remain open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught. During the 2004 and 2005 fishing years, the TACs were not fully utilized, and inseason changes to the regulations impacted the fishery. Two of the three specified TACs are being reduced (haddock and yellowtail flounder), and could, under certain circumstances, constrain fishing opportunity on cod (for which the TAC is increasing).

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Reductions to the value of the fish may result from fishing derby behavior and the potential impact on markets. The overall economic impact of the proposed 2007 U.S./Canada TACs will likely be different from the economic impacts of the 2006 TACs due to the reduced yellowtail flounder TAC, and may result in reduced revenue. Although the 2007 cod TAC represents an increase from 2006, the 2007 haddock and yellowtail flounder TACs represent decreases from 2006. For yellowtail flounder, the decrease is substantial. Based on the estimates in the EA, revenues from cod caught in the Eastern U.S./Canada Area may increase from 2006 to 2007 by approximately 32 percent, and revenue from haddock and yellowtail flounder in the U.S./Canada Management Area may decline by 16 percent and 57 percent, respectively. According to the analysis, the overall change in revenue from 2006 to 2007 for the 3 species combined could amount to a 33–percent decline (or approximately $ 3.5 million), although it is difficult to predict future fishing patterns, and there are factors that may mitigate the decline in overall revenue. For example, there could be an increase in yellowtail flounder price, as well as the potential for increased opportunity to harvest haddock from the Eastern U.S./Canada Area. If the larger GB cod TAC results in a longer period of time that the Eastern U.S./Canada Area is open, and if vessels attempt to, and are successful in avoidance of cod, the Eastern Area may be open for a longer period of time, resulting in additional revenue from haddock.

Although unlikely, a downward adjustment to the TACs specified for FY 2007 could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during the 2006 fishing year exceeded the relevant TACs specified for FY 2006. The economic effects of this downward adjustment would likely result in a short term loss of revenue proportional to the magnitude of the adjustment.

Three alternatives were considered for FY 2007: The proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs are proposed because the process involving the TMGC and the Council yields only one proposed set of TACs. Accordingly, NMFS chooses to either accept or reject the recommendation of the Council. The TACs implemented through this action would have a similar economic impact as the FY 2006 TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information incorporated from the most recent TRAC. The status quo TACs are based on stock assessments conducted in 2005, and are therefore outdated and do not reflect the most recent status of the stocks determined during the 2006 assessments. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. On the short term, the no action alternative would not prevent overfishing, and in the long term, the no action alternative would not rebuild the stocks and consistently attain optimum yield for the fishery.

The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the Understanding and the FMP). As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the preferred alternative.

There is good cause under 5 U.S.C. 553(d)(3), to waive the 30–day delay in effective date because doing otherwise may compromise full and effective management of the FMP. If the 30–day delay in effectiveness is not waived, the hard TACs would not be in effect at the beginning of the fishing year (May 1, 2007). Such a delay in implementation could impact the fishery in several different ways.

Implementation of the hard TAC after the beginning of the fishing year would prevent NMFS from being able to prevent the possible overharvest of some or all of the stocks managed by a hard TAC. Most notably, in the case of Eastern GB cod and GB yellowtail flounder, because the size of the TACs are relatively small, and the possibility that the catch rate of cod and yellowtail flounder could be high during the month of May, it is likely that the TACs could be reached and exceeded during the 30–day delay in effectiveness period. If no TACs are in place, the Regional Administrator would be unable to take action to stop fishing on these stocks. Failure to stop fishing on the stocks when the TAC is caught would undermine the GB cod and yellowtail flounder rebuilding schedules of the FMP. Furthermore, any resulting TAC overages must be deducted from the following year's TAC, which would result in a negative economic impact to the fishery for FY 2007. Due to the fact that the TAC specifications originally recommended by the TMGC were remanded by the Council, there was a delay of over two months in the Council's final recommendation to NMFS for the FY 2007 TACs on November 16, 2006. This caused subsequent delays in the TAC specification process by NMFS, which includes comprehensive environmental and socioeconomic analyses, internal review, and rule-making, thereby resulting in later than normal publication of the proposed rule for this action.

The specified TACs do not modify any collection of information, reporting, or recordkeeping requirements. The specified TACs do not duplicate, overlap, or conflict with any other Federal rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office web site at *http://www.nero.noaa.gov* and will also be available upon request.

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

Dated: May 3, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 07–2270 Filed 5–3–07; 2:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 87
Monday, May 7, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27270; Airspace Docket No. 07–ANM–1]

RIN 2120–AA66

Proposed Establishment of Area Navigation Routes (RNAV), Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a high altitude RNAV route in the Seattle, WA area to facilitate air traffic operations by providing a direct route to the Phoenix, AZ area. The FAA is implementing this route to enhance safety and to provide a more efficient use of navigable airspace.

DATES: Comments must be received on or before June 21, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2007–27270 and Airspace Docket No. 07–ANM–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, 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–2007–27270 and Airspace Docket No. 07–ANM–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.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–2007–27270 Airspace Docket No. 07–ANM–1.'' 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 NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov,* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets 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, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, 15000 SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRM's 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

As part of the on-going efforts to establish area navigation routings the FAA is establishing RNAV routes to provide greater freedom to properly equipped users, and to achieve the safety and economic benefits of flying user-selected non-restrictive routings. The new RNAV routes will be identified by the letter prefix ''Q'' followed by a number consisting of from one to three digits. The International Civil Aviation Organization (ICAO) has allocated the ''Q'' prefix, along with the number set 1 through 499, for use by the U.S. for designating domestic RNAV routes.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish an RNAV route within the airspace assigned to the Seattle, Los Angeles, Albuquerque, Salt Lake City and Denver Air Route Traffic Control Center (ARTCC). This route is proposed to provide a direct route from the Seattle, WA area to Phoenix, AZ, that would enhance the safety, and facilitate a more flexible and efficient use of navigable airspace for en route instrument flight rules operations.

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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'', paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

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 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 2006 Area Navigation Routes.

* * * * *

Q–35 IMB to DRK [New]

IMB	VORTAC	(lat. 44°38′54″ N., long. 119°42′42″ W.)
NEERO	WP	(lat. 41°49′03″ N., long. 118°01′29″ W.)
WINEN	WP	(lat. 37°56′00″ N., long. 113°30′00″ W.)
CORKR	Fix	(lat. 36°05′02″ N., long. 112°24′01″ W.)
DRK	VORTAC	(lat. 34°42′09″ N., long. 112°28′49″ W.)

* * * * *

Issued in Washington, DC, on April 30, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7–8603 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

[DoD–2006–OS–0136]

RIN 0790–AI15

Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to amend the current rule addressing military recruiting and Reserve Officer Training Corps program access at institutions of higher education. This proposed rule would implement 10 U.S.C. 983, as amended by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375 (October 28, 2004)). As amended, 10 U.S.C. 983 clarifies access to campuses, access to students and access to directory information on students for the purposes of military recruiting, and now states that access to campuses and students on campuses shall be provided in a manner that is at least equal in quality and scope to that provided to any other employer. The prohibition against providing Federal funds when there is a violation of 10 U.S.C. 983 has an exception for any Federal funds provided to an institution of higher education, or to an individual, that are available solely for student financial assistance, related administrative costs, or costs associated with attendance. Such funds may be used for the purpose for which the funding is provided. A similar provision in section 8120 of the Department of Defense Appropriations Act of 2000 (Pub. L. 106–79; 113 Stat. 1260) has been repealed. This rule also rescinds the previous policy that established an exception that would limit recruiting on the premises of the covered school only in response to an expression of student interest when the covered school certified that too few students had expressed interest to warrant accommodating military recruiters.

DATES: Comments must be received by July 6, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Brenda Leong, Office of the Under Secretary of Defense (Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301–4000 (telephone: (703) 695–5529).

SUPPLEMENTARY INFORMATION: ''Covered funds'' is defined in 10 U.S.C. 983 to be any funds made available for the Departments of Defense, Transportation, Homeland Security, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or for any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. None of these covered funds may be provided by contract or grant to a covered school (including any subelement of a covered school) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of Defense from establishing or operating a Senior Reserve Officer Training Corps (ROTC) at that covered school (or any subelement of that covered school); or that either prohibits, or in effect prevents, a student at that covered school (or any subelement of that covered school) from enrolling in a ROTC unit at another institution of higher education. The Federal law further provides similar sanctions

against these covered funds being provided to a covered school (or any subelement of a covered school) that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting, where such policy or practice denies the military recruiter access that is at least equal in quality and scope to the access to campuses and students provided to any other employer; or access to student directory information pertaining to the students' names, addresses, telephone listings, dates and places of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student. The term ''equal in quality and scope'' means the same access to campus and students provided by the school to the nonmilitary recruiter receiving the most favorable access.[1]

As an exception to the above rule, any Federal funding provided to a covered school or to an individual that is available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

The Department of Defense drafted this proposed rule in consultation with other Federal agencies, including the Departments of Education, Labor, Transportation, Health and Human Services, Homeland Security, Energy, and the Central Intelligence Agency. Agencies affected by this rule will continue to coordinate with other organizations as they implement their provisions.

This proposed rule defines the criteria for determining whether an institution of higher education has a policy or practice prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit; or has a policy of denying military recruiting personnel access that is at least equal in quality and scope to the access to campuses and students provided to any other employer, or access to directory information on students. Pursuant to 10 U.S.C. 983 and this proposed rule, institutions of higher education having such policies or practices are ineligible for certain Federal funding.

The criterion of ''efficiently operating a Senior ROTC unit'' refers generally to an expectation that the ROTC Department would be treated on a par with other academic departments; as such, it would not be singled out for unreasonable actions that would impede access to students (and vice versa) or restrict its operations.

This proposed rule also defines the procedures that would be followed in evaluating reports that a covered school has not met requirements defined in this rule. When a component of the Department of Defense (DoD component) believes that policies or practices of an institution of higher education might require such an evaluation, that component is required to confirm the institution's policy in consultation with the institution. If that exchange suggests that the policy or practice could trigger a denial of funding, as required by the Act, the supporting facts would be forwarded through Department of Defense channels to the decision authority, the Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)).

In evaluating whether an institution that provides information in response to a request from a military recruiter for military recruiting purposes would violate the Family Educational Rights and Privacy Act of 1972, as amended, (FERPA; 20 U.S.C. 1232g), the Department of Education has informed the Department of Defense that it will not consider the act of providing responsive student information as required under the Act and this rule as an act that violates FERPA. Institutions must take care, however, to release only that information specifically required under 10 U.S.C. 983 and this proposed rule.

Regarding the opportunity for a student to ''opt-out'' of or object to the release of ''directory information'' under FERPA, the Department of Defense provides the following clarification. If an institution receives a request for student-recruiting information, and that request seeks information that the institution has included in its definition of ''directory information'' that is releasable under FERPA, and a student has previously requested, in writing, that the ''directory information'' not be disclosed to any third party, the Department of Defense agrees that information for that student will not be provided to the requesting military recruiter or Department of Defense. If an institution declines to provide student-recruiting information because a student has ''opted-out'' from the institution's policy of disclosing ''directory information'' under FERPA, the Department of Defense will not consider that institution to have denied access under 10 U.S.C. 983. The Department of Defense will honor only those student ''opt-outs'' from the disclosure of directory information that are even-handedly applied to all prospective employers seeking information for recruiting purposes. In those circumstances where an institution's ''directory information'' definition does not include all of the student-recruiting information required under 10 U.S.C. 983, the Department of Defense will also honor the student's ''opt-out'' decision that was made regarding the release of the institution's ''directory information.''

If an institution does not release all of the requested student-recruiting information as part of its ''directory information'' policy under FERPA (or has a policy of disclosing no ''directory information''), the institution must nevertheless honor the request from a military recruiter for student-recruiting information concerning students who have not ''opted-out'', even if that information would not be available to the public under FERPA. Because this information is requested exclusively for military recruiting, a special opportunity for a student to decline the release of student-recruiting information is not necessary or appropriate.

Summary of Rule

In carrying out their customary activities, DoD components must identify any covered school that, by policy or practice, denies military recruiting personnel access to its campus or access to its students on campus in a manner that is at least equal in quality and scope to access provided to any other employer, in effect denies students permission to participate, or prevents students from participating in recruiting activities, or denies military recruiters access to student-recruiting information. The term ''equal in quality and scope'' means the same access to campus and students provided to the nonmilitary recruiter receiving the most favorable

[1] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis add [by Court].) * * *

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text of the statute support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

access.[2] When requests to schedule recruiting visits or to obtain student-recruiting information are unsuccessful, the DoD component concerned must seek written confirmation of the school's present policy from the head of the covered school through a letter of inquiry, allowing 30 days for response. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the DoD component's submission to the PDUSD(P&R). When that 30-day period has elapsed, the DoD component will forward the case for disposition.

Similarly, in carrying out their customary activities, DoD components also must identify any covered school that, by policy or practice, denies establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or denies students permission to participate, or effectively prevents students from participating in a unit of the Senior ROTC at another institution of higher education. The DoD component concerned must seek written confirmation of the school's policy from the head of the covered school through a letter of inquiry, allowing 30 days for response. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the DoD component's submission to the PDUSD(P&R). When that 30-day period has elapsed, the DoD component will forward the case for disposition.

The recommendation of the DoD component then must be reviewed by the Secretary of the Military Department concerned, or designee, who shall evaluate responses to the letter of inquiry and other such information obtained in accordance with this part, and submit to the PDUSD(P&R) the names and addresses of covered schools that are believed to be in violation of 10 U.S.C. 983. Full documentation must be furnished to the PDUSD(P&R) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies. Under agreement with the Department of Homeland Security, reports of covered schools believed to be in violation of 10 U.S.C. 983 with regard to the Coast Guard when not operating as a Service in the Navy shall be furnished to the PDUSD(P&R) for disposition.

Following any determination by the PDUSD(P&R) that the policies or practices of an institution of higher education require ineligibility for certain Federal funding, as required by the Act, the PDUSD(P&R) shall:

- Disseminate to Federal entities affected by the decision, including the DoD components and the General Services Administration (GSA), and to the Secretary of Education and the head of each other department and agency the funds of which are subject to the determination, the names of the affected institutions. The PDUSD(P&R) also shall notify the Committees on Armed Services of the Senate and the House of Representatives;
- Publish in the **Federal Register** each such determination, and publish in the **Federal Register** at least once every 6 months a list of all institutions currently determined to be ineligible for contracts and grants by reason of such determinations; and
- Inform the affected institution that its funding eligibility may be restored if the school provides sufficient new information to establish that the basis for the determination no longer exists.

This proposed rule contains procedures under which funding may be restored. Not later than 45 days after receipt of a school's request to restore funding eligibility, the PDUSD(P&R) must determine whether the funding status of the covered school should be changed and notify the applicable school of that determination. Pursuant to that determination, entities of the Federal government affected by the decision, including the DoD components and the GSA, shall be notified of any change in funding status.

Other Matters

In the event of any determination of ineligibility by the PDUSD(P&R), Federal departments and agencies concerned shall determine what funds provided by grant or contract to the covered school are affected and take appropriate action. As a result of this division of responsibility and the large number of Federal departments and agencies affected, this rule does not detail what specific funds are affected by any determination of ineligibility.

This proposed rule does not affect or cover any Federal funding that is provided to an institution of higher education or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance. This includes, but is not limited to, funds under the Federal Supplemental Educational Opportunity Grant Program (Title IV, Part A, Subpart 3 of the Higher Education Act of 1965, as amended), the Federal Work-Study Program (Title IV, Part C), and the Federal Perkins Loan Program (Title IV, Part E), the Federal Pell Grant Program (Title IV, Part A, Subpart 1), the Federal Family Education Loan Program (Title IV, Part B), and the William D. Ford Federal Direct Loan Program (Title IV, Part D). The Secretary of Education will provide additional information about the applicability of the rule to other Department of Education programs in communications to the affected communities.

Executive Order 12866, ''Regulatory Planning and Review''

This proposed rule is a significant regulatory action that OMB has approved for publication.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities since recent history indicates that their provisions are not applicable to the vast majority of institutions of higher education.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

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[2] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis added [by Court].) * * *

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text of the statute support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures for on-campus military recruiting and student access to Reserve Officer Training Corps (ROTC) programs in implementation of 10 U.S.C. 983.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This proposed rule will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

Executive Order 13132

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 216

Armed forces; Colleges and universities.

Accordingly, 32 CFR part 216 is proposed to be revised to reflect the most recent statutory changes and to read as follows:

PART 216—MILITARY RECRUITING AND RESERVE OFFICER TRAINING CORPS PROGRAM ACCESS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.

216.1 Purpose.
216.2 Applicability.
216.3 Definitions.
216.4 Policy.
216.5 Responsibilities.
216.6 Information requirements.
Appendix A of Part 216—Military Recruiting Sample Letter of Inquiry
Appendix B of Part 216—ROTC Sample Letter of Inquiry

Authority: 10 U.S.C. 983.

§ 216.1 Purpose.

This part:

(a) Implements 10 U.S.C. 983.

(b) Updates policy and responsibilities relating to the management of covered schools that have a policy of denying or effectively preventing military recruiting personnel access to their campuses or access to students on their campuses in a manner that is at least equal in quality and scope to the access to campuses and to students provided to any other employer, or access to student-recruiting information. The term ''equal in quality and scope'' means the same access to campus and students provided to the nonmilitary recruiter receiving the most favorable access.[1]

(c) Updates policy and responsibilities relating to the management of covered schools that have an anti-ROTC policy.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD components''). This part also applies, by agreement with the Department of Homeland Security (DHS), to the Coast Guard at all times, including when it is a service in the Department of Homeland Security. The policies herein also affect the Departments of Transportation, Homeland Security, Energy (National Nuclear Security Administration), the Central Intelligence Agency, and any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act. The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard, including their Reserve or National Guard components. The term ''Related Agencies'' as used herein refers to the Armed Forces Retirement Home, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Federal Mediation and Conciliation Service, the Federal Mine Safety and Health Review Commission, the National Commission on Libraries and Information Science, the National Council on Disability, the National Education Goals Panel, the National Labor Relations Board, the National Mediation Board, the Occupational Safety and Health Review Commission, the Social Security Administration, the Railroad Retirement Board and the United States Institute of Peace.

§ 216.3 Definitions.

(a) *Anti-ROTC policy.* A policy or practice whereby a covered school prohibits or in effect prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC at the covered school, or prohibits or in effect prevents a student at the covered school from enrolling in a Senior ROTC unit at another institution of higher education.

(b) *Covered funds.* ''Covered funds'' is defined in 10 U.S.C. 983 as any funds made available for the Departments of Defense, Transportation, Homeland Security, or National Nuclear Security Administration of the Department of Energy, the Central Intelligence Agency, or any department or agency in which regular appropriations are made in the Departments of Labor, Health and Human Services, and Education, as well as in Related Agencies Appropriations Act (excluding any Federal funds provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance).

(c) *Covered school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) A determination (§ 216.5(a)) affecting only a subelement of a parent institution (see § 216.3(f)) effects a limitation on the use of funds (§ 216.4(a)) applicable to the parent institution as a whole, including the institution's offending subelement and all of its subelements, if any.

(2) When an individual institution of higher education that is part of a single university system (e.g., University of (State) at (City)—a part of that state's university system) has a policy or practice that prohibits, or in effect prevents, access to campuses or access to students on campuses in a manner

[1] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297, 1305 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis added [by Court].) The statute does not call for an inquiry into why or how the 'other employer' secured its access * * * We do not think that the military recruiter has received equal 'access' [when a law firm is permitted on campus to interview students and the military is not]—regardless of whether the disparate treatment is attributable to the military's failure to comply with the school's nondiscrimination policy.

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

that is at least equal in quality and scope to the access to its campus and students as it provides to any other employer, or access to student-recruiting information by military recruiters, or has an anti-ROTC policy, as defined in this rule, it is only that individual institution within that university system that is affected by the loss of Federal funds. This limited effect applies even though another campus of the same university system may or may not be affected by a separate determination under § 216.5(a). The funding of a subelement of the offending individual institution of a single university system, if any, will also be withheld as a result of the policies or practices of that offending individual institution.

(d) *Enrolled.* Students are ''enrolled'' when registered for at least one credit hour of academic credit at the covered school during the most recent, current, or next term. Students who are enrolled during the most recent term, but who are no longer attending the institution, are included.

(e) *Equal in quality and scope.* The same access to campus and students on campus provided to the nonmilitary recruiter receiving the most favorable access.[2]

(f) *Institution of higher education.* A domestic college, university, or other institution (or subelement thereof) providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of an institution of higher education is a discrete (although not necessarily autonomous) organizational entity that may establish policies or practices affecting military recruiting and related actions (e.g., an undergraduate school, a law school, a medical school, other graduate schools, or a national laboratory connected or affiliated with that parent institution). For example, the School of Law of XYZ University is a subelement of its parent institution (XYZ University).

(g) *Military recruiters.* Personnel of DoD whose current assignment or detail is to a recruiting activity of the DoD.

(h) *Pacifism.* Opposition to war or violence, demonstrated by refusal to participate in military service.

(i) *Student.* An individual who is 17 years of age or older and is enrolled at a covered school.

(j) *Student-recruiting information.* For those students currently enrolled, the student's name, address, telephone listing, age (or year of birth), place of birth, level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), most recent educational institution attended, and current major(s).

§ 216.4 Policy.

It is DoD policy that:

(a) Under 10 U.S.C. 983, no covered funds may be provided by contract or grant (to include payment on such contracts or grants previously obligated) to a covered school if the Secretary of Defense determines that the covered school:

(1) Has a policy or practice (regardless of when implemented) that either prohibits or in effect prevents the Secretary of Defense or Secretary of Homeland Security from obtaining, for military recruiting purposes, access to campuses or access to students on campuses that is at least equal in quality and scope, as defined in § 216.3(d), to the access to campuses and to students provided to any other employer, or access to directory information on students;

(2) Has failed to disseminate military visit information or alerts at least on par with nonmilitary recruiters since schools offering such services to nonmilitary recruiters must also send e-mails, post notices, etc., on behalf of military recruiters to comply with the Solomon Amendment; [3]

(3) Has failed to schedule visits at times requested by military recruiters that coincide with nonmilitary recruiters' visits to campus if this results in a greater level of access for other recruiters than for the military (e.g., offering non-military recruiters a choice of a variety of dates for on-campus interviews while only offering the military recruiters the final day of interviews), as schools must ensure that their recruiting policies operate such that military recruiters are given access to students at least equal to that provided to any other employer; [4]

(4) Has failed to provide military recruiters with a mainstream recruiting location amidst nonmilitary employers to allow unfettered access to interviewees since military recruiters must be given the same access as recruiters who comply with a school's nondiscrimination policy; [5]

(5) Has failed to enforce time, place, and manner policies established by the covered school such that the military recruiters experience an inferior or unsafe recruiting climate, as schools must allow military recruiters on campus and must assist them in whatever way the school assists other employers; [6]

(6) Has through policy or practice in effect denied students permission to participate, or has prevented students from participating, in recruiting activities; or

(7) Has an anti-ROTC policy or practice, as defined in this rule, regardless of when implemented.

(b) The limitations established in paragraph (a) of this section shall not apply to a covered school if the Secretary of Defense determines that the covered school:

(1) Has ceased the policies or practices defined in paragraph (a) of this section;

(2) Has a long-standing policy of pacifism (see § 216.3(j)) based on historical religious affiliation;

(3) When not providing requested access to campuses or to students on campus, certifies that all employers are similarly excluded from recruiting on the premises of the covered school, or presents evidence that the degree of access by military recruiters is the same access to campuses or to students on campuses provided to the nonmilitary recruiter receiving the most favorable access; [7]

(4) When not providing any student-recruiting information, certifies that such information is not maintained by the covered school; or that such information already has been provided

[2] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297, 1305 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer.*' (Emphasis added [by Court].) The statute does not call for an inquiry into why or how the 'other employer' secured its access * * * We do not think that the military recruiter has received equal 'access' [when a law firm is permitted on campus to interview students and the military is not]—regardless of whether the disparate treatment is attributable to the military's failure to comply with the school's nondiscrimination policy.

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

[3] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. at 1308.

[4] *Id.* at 1305.

[5] *Id.* at 1306.

[6] *Id.* at 1312.

[7] *Id.* at 1304.

to the Military Service concerned for that current semester, trimester, quarter, or other academic term, or within the past four months (for institutions without academic terms);

(5) When not providing student-recruiting information for a specific student certifies that the student concerned has formally requested, in writing, that the covered school withhold this information from all third parties;

(c) A covered school may charge military recruiters a fee for the costs incurred in providing access to student-recruiting information when that institution can certify that such charges are the actual costs, provided that such charges are reasonable, customary and identical to fees charged to other employers.

(d) An evaluation to determine whether a covered school maintains a policy or practice covered by paragraphs (a)(1) through (6) of this section shall be undertaken when:

(1) Military recruiting personnel are prohibited, or in effect prevented, from the same access to campuses or access to students on campuses provided to the nonmilitary recruiter receiving the most favorable access, or are denied access to student-recruiting information; [8]

(2) Information or alerts on military visits are not distributed at least on par with nonmilitary recruiters since schools offering such services to nonmilitary recruiters must also send e-mails, post notices, etc., on behalf of the military recruiter to comply with the Solomon Amendment; [9]

(3) Military recruiters are prohibited from scheduling their visits at requested times that coincide with nonmilitary recruiters' visits to its campus if this results in a greater level of access for other recruiters than for the military as schools must ensure their recruiting policy operates in such a way that military recruiters are given access to students at least equal to that provided to any other employer; [10]

(4) Military recruiters do not receive a mainstream recruiting location amidst nonmilitary employers to allow unfettered access to interviewees since military recruiters must be given the same access as recruiters who comply with the school's nondiscrimination policy; [11]

(5) The school has failed to enforce time, place, and manner policies established by that school such that military recruiters experience an inferior or unsafe recruiting climate, as schools must allow military recruiters on campus and must assist them in whatever way the school chooses to assist other employers; [12]

(6) Evidence is discovered of an institution-sponsored policy or practice that in effect denied students permission to participate, or prevented students from participating in recruiting activities.

(7) The costs being charged by the school for providing student-recruiting information are believed by the military recruiter to be excessive, and the school does not provide information sufficient to support a conclusion that such are the actual costs, provided that they are reasonable and customary, and are identical to those costs charged to other employers; or

(8) The covered school is unwilling to declare in writing, in response to an inquiry from a representative of a DoD component or a representative from the Department of Homeland Security, that the covered school does not have a policy or practice of prohibiting, or in effect preventing, the Secretary of a Military Department or Secretary of Homeland Security from the same access to campuses or access to students on campuses provided to the nonmilitary recruiter receiving the most favorable access, or access to student-recruiting information by military recruiters for purposes of military recruiting.

(e) An evaluation to determine whether a covered school has an anti-ROTC policy covered by paragraph (a)(7) of this section shall be undertaken when:

(1) A Secretary of a Military Department or designee cannot obtain permission to establish, maintain, or efficiently operate a unit of the Senior ROTC; or

(2) Absent a Senior ROTC unit at the covered school, students cannot obtain permission from a covered school to participate, or are effectively prevented from participating, in a unit of the Senior ROTC at another institution of higher education.

§ 216.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 45 days after receipt of the information described in paragraphs (b)(3) and (c)(1) of this section:

(i) Inform the Office of Naval Research (ONR) and the Director, Defense Finance and Accounting Service that a final determination will be made so that those offices can make appropriate preparations to carry out their responsibilities should a covered school be determined ineligible to receive Federal funds.

(ii) Make a final determination under 10 U.S.C. 983, as implemented by this part, and notify any affected school of that determination and its basis, and that the school is therefore ineligible to receive covered funds as a result of that determination.

(iii) Disseminate to Federal entities affected by the decision, including the DoD components and the General Services Administration (GSA), and to the Secretary of Education and the head of each other department and agency the funds of which are subject to the determination, the names of the affected institutions identified under paragraph (a)(1)(ii) of this section.

(iv) Notify the Committees on Armed Services of the Senate and the House of Representatives of the affected institutions identified under paragraph (a)(1)(ii) of this section.

(v) Inform the affected school identified under paragraph (a)(1)(ii) of this section that its funding eligibility may be restored if the school provides sufficient new information that the basis for the determination under paragraph (a)(1)(ii) of this section no longer exists.

(2) Not later than 45 days after receipt of a covered school's request to restore its eligibility:

(i) Determine whether the funding status of the covered school should be changed, and notify the applicable school of that determination.

(ii) Notify the parties reflected in paragraphs (a)(1)(i), (a)(1)(iii), and (a)(1)(iv) of this section when a determination of funding ineligibility (paragraph (a)(1)(ii) of this section) has been rescinded.

(3) Publish in the **Federal Register** each determination of the PDUSD(P&R) that a covered school is ineligible for contracts and grants made under 10 U.S.C. 983, as implemented by this part.

(4) Publish in the **Federal Register** least once every 6 months a list of covered schools that are ineligible for contracts and grants by reason of a determination of the Secretary of Defense under 10 U.S.C. 983, as implemented by this part.

(5) Enter information into the Excluded Parties List System [13] about

[8] *Id.* at 1304.

[9] *Id.* at 1308.

[10] *Id.* at 1305.

[11] *Id.* at 1306.

[12] *Id.* at 1312.

[13] The Excluded Parties List System (EPLS) is the system that the General Services Administration maintains for Executive Branch agencies, with

each covered school that the PDUSD(P&R) determines to be ineligible for contracts and grants under 10 U.S.C. 983 and/or this part, generally within 5 days of making thedetermination.

(6) Provide ONR with an updated list of the names of institutions identified under paragraph (a)(1)(ii) of this section whenever the list changes due to an institution being added to or dropped from the list, so that ONR can carry out its responsibilities for post-award administration of DoD Components' contracts and grants with institutions of higher education.

(7) Provide the Office of the Deputy Chief Financial Officer, DoD, and the Director, Defense Finance and Accounting Service with an updated list of the names of institutions identified under paragraph (a)(1)(ii) of this section whenever the list changes due to an institution being added or dropped from the list, so that those offices can carry out their responsibilities related to cessation of payments of prior contract and grant obligations to institutions of higher education that are on the list.

(8) Publish in the **Federal Register** the list of names of affected institutions that have changed their policies or practices such that they are determined no longer to be in violation of 10 U.S.C. 983 and this part.

(b) The Secretaries of the Military Departments and the Secretary of Homeland Security shall:

(1) Identify covered schools that, by policy or practice, prohibit, or in effect prevent, the same access to campuses or access to students on campuses provided to the nonmilitary recruiter receiving the most favorable access, or access to student-recruiting information by military recruiters for military recruiting purposes.

(i) When requests by military recruiters to schedule recruiting visits are unsuccessful, the Military Service concerned, and the Office of the Secretary of Homeland Security when the Coast Guard is operating as a service in the Department of Homeland Security, shall seek written confirmation of the school's present policy from the head of the school through a letter of inquiry. A letter similar to that shown in Appendix A of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the submission to the PDUSD(P&R).

(ii) When a request for student-recruiting information is not fulfilled within a reasonable period, normally 30 days, a letter similar to that shown in Appendix A shall be used to communicate the problem to the school, and the inquiry shall be managed as described in 216.5.(b)(1)(ii). Schools may stipulate that requests for student-recruiting information be in writing.

(2) Identify covered schools that, by policy or practice, deny establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or deny students permission to participate, or effectively prevent students from participating in a unit of the Senior ROTC at another institution of higher education. The Military Service concerned, and the Office of the Secretary of Homeland Security when the Coast Guard is operating as a service in the Department of Homeland Security, shall seek written confirmation of the school's policy from the head of the school through a letter of inquiry. A letter similar to that shown in Appendix B of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments within 30 days to accompany the submission to the PDUSD(P&R).

(3) Evaluate responses to the letter of inquiry, and other such evidence obtained in accordance with this part, and submit to the PDUSD(P&R) the names and addresses of covered schools that are believed to be in violation of policies established in § 216.4. Full documentation shall be furnished to the PDUSD(P&R) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies.

(c) The Heads of the DoD components and Secretary of Homeland Security shall:

(1) Provide the PDUSD(P&R) with the names and addresses of covered schools identified as a result of evaluation(s) required under § 216.4(d) and (e).

(2) Take immediate action to deny obligations of covered funds to covered schools identified under paragraph (a)(1)(ii) of this section, and to restore eligibility of covered schools identified under paragraph (a)(2) of this section.

§ 216.6 Information requirements.

The information requirements identified at § 216.5(b) and (c)(1) have been assigned Report Control Symbol DD–P&R–(AR)–2038 in accordance with DoD 8910.1–M.[14]

Appendix A of Part 216—Military Recruiting Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. John Doe
President
ABC University
Anywhere, USA 12345–9876

Dear Dr. Doe:

I understand that military recruiting personnel [have been unable to recruit or have been refused student-recruiting information[15] at (subelement of) ABC University)] by a policy or practice of the school. Specifically, military recruiting personnel have reported [here state policy decisions or practices encountered]. [If preliminary information coming to the attention of a Military Service indicates that other Military Services' recruiting representatives have been similarly informed of the policy or experienced a similar practice affecting their ability for military recruiting purposes to have the access or information require, so state.]

Current Federal law[16] denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education (including any subelements of such institutions) that have a policy or practice of denying military recruiting personnel access to campuses or access to students on campuses, in a manner that is at least equal in quality and scope,[17] as it provides to the

names and other pertinent information of persons who are debarred, suspended, or otherwise ineligible for Federal procurement and/or covered non-procurement transactions.

[14] Copies may be obtained at *http://www.dtic.mil/whs/directives/*.

[15] Student-recruiting information refers to a student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major(s).

[16] 10 U.S.C. 983.

[17] *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 126 S. Ct. 1297 (2006):

''The statute requires the Secretary of Defense to compare the military's 'access to campuses' and 'access to students' to 'the access to campuses and to students that is provided to *any other employer*.' (Emphasis add [by Court].) * * *

Continued

nonmilitary recruiter receiving the most favorable access, or access to student recruiting information. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding military recruiting on the campus of [University]. In that regard, I request, within the next 30 days, a written policy statement of the institution with respect to access to campus and students by military recruiting personnel. Your response should highlight any difference between access for military recruiters and access for recruiting by other potential employers.

Based on this information and any additional facts you can provide, Department of Defense officials will make a determination as to your institution's eligibility to receive funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies. Should it be determined that [University] as an institution of higher education (or any subelement of the institution) is in violation of the aforementioned statutes and regulations, such funding would be stopped, and the institution of higher education (including any subelements of the institution) would remain ineligible to receive such funds until and unless the Department of Defense determines that the institution has ceased the offending policies and practices.

I regret that this action may have to be taken. Successful recruiting requires that Department of Defense recruiters have equal access to students on the campuses of colleges and universities [and student-recruiting information], and at the same time, have effective relationships with the officials and student bodies of those institutions. I hope it will be possible to identify and correct any policies or practices that inhibit military recruiting at your school. [My representative, (name), is] [I am] available to answer any of your questions by telephone at [telephone number]. I look forward to your reply.

Sincerely,

Appendix B of Part 216—ROTC Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. Jane Smith
President
ABC University
Anywhere, USA 12345–9876

Dear Dr. Smith:

I understand that ABC University has [refused a request from a Military Department to establish a Senior ROTC unit at your institution][refused to continue existing ROTC programs at your institution][prevented students from participation at a Senior ROTC program at another institution] by a policy or practice of the University.

Current Federal law [18] denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education (including any subelements of such institutions) that have a policy or practice of prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding ROTC access on the campus of ABC University. In that regard, I request, within the next 30 days, a written statement of the institution with respect to [define the problem area(s)].

Based on this information, Department of Defense officials will make a determination as to your institution's eligibility to receive the above-referenced funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies. Should it be determined that [University] as an institution of higher education (or any subelement of the institution) is in violation of the aforementioned statutes and regulations, such funding would be stopped, and the institution of higher education (including any subelements of the institution) would remain ineligible to receive such funds until and unless the Department of Defense determines that the institution has ceased the offending policies and practices.

I regret that this action may have to be taken. Successful officer procurement requires that the Department of Defense maintain a strong ROTC program. I hope it will be possible to [define the correction to the aforementioned problem area(s)]. [My representative, (name), is] [I am] available to answer any of your questions by telephone at [telephone number]. I look forward to your reply.

Sincerely,

The Solomon Amendment does not focus on the content of a school's recruiting policy, [but instead on] the result achieved by the policy and compares the 'access * * * provided' military recruiters to that provided other recruiters. Applying the same policy to all recruiters is therefore insufficient to comply with the statute if it results in a greater level of access for other recruiters than for the military. * * *

Not only does the text of the statute support this view, but this interpretation is necessary to give effect to the Solomon Amendment's recent revision.''

[18] 10 U.S.C. 983.

Dated: May 1, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–8662 Filed 5–4–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–007]

RIN 1625–AA00

Safety Zone, Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Safety Zone in Chicago Harbor. This zone is intended to restrict vessels from portions of Chicago Harbor during fireworks displays that pose a hazard to public safety. This zone is necessary to protect the public from the hazards associated with fireworks displays.

DATES: Comments and related materials must reach the Coast Guard on or before June 6, 2007.

ADDRESSES: You may mail comments and related material to Commander Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–07–007], indicate the specific section of this document to which each comment applies, and give the reason for each

comment. You may submit your comments and material by mail (see **ADDRESSES**). 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, which may result in a modification to the rule.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a public meeting (see **ADDRESSES**) explaining why one 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

This safety zone is necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Rule

The proposed safety zone is necessary to ensure the safety of vessels and people during fireworks displays in Chicago Harbor. The proposed safety zone encompasses the waters of Lake Michigan within Chicago Harbor between the east end of near Navy Pier and the Chicago Harbor breakwater.

The Coast Guard Patrol Commander will be on-scene while the safety zone is enacted and inform the public that the safety zone is being enforced. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

The proposed safety zone replaces 33 CFR 165.918 Safety Zones; Annual fireworks events in the Captain of the Port Chicago Zone, paragraph (a)(13) and (14). The safety zone will encompass the waters of Lake Michigan within Chicago Harbor between the east end of Navy Pier and the Chicago Harbor breakwater beginning at 41°53′37″ N, 087°35′26″ W; then south to 41°53′24″ N, 087°35′26″ W; then east to 41°53′24″ N, 087°35′55″ W; then north to 41°53′37″ N, 087°35′55″ W; then back to the point of origin.

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. It has not been reviewed by the Office of Management and Budget 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The Coast Guard's use of this safety zone will be periodic in nature and will likely not exceed 10, one-hour events per year. This safety zone will only be enforced during the time the safety zone is actually in use. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

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.

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information as to the number of small entities that may be affected. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate whether a substantial number of small entities are affected as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies, 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 offered 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 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).

Collection of Information

This proposed 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 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 rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed 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 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 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 this proposed safety zone and fishing rights protection need not be incompatible. We have also determined that this Proposed 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 Proposed Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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 does 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.lD, 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore we believe this rule should be categorically excluded, under figure 2–1, paragraph 34 (g) from further environmental documentation. This proposed rule establishes a safety zone and as such is covered by this paragraph.

A preliminary ''Environmental Analysis Check List'' and a preliminary ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. Add § 165.933 to read as follows:

§ 165.933 Safety Zone, Chicago Harbor, Navy Pier East, Chicago IL.

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor between the east end of Navy Pier and the Chicago Harbor breakwater beginning at 41°53′37″ N, 087°35′26″ W; then south to 41°53′24″ N, 087°35′26″ W; then east to 41°53′24″ N, 087°35′55″ W; then north to 41°53′37″ N, 087°35′55″ W; then back to the point of origin.

(b) *Definitions.* The following definitions apply to this section: (1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zones and take other actions authorized by the Captain of the Port.

(2) Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement.* The safety zone established by this section will be enforced only upon notice of the Captain of the Port. The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7 (a). Such means of notification may also include,

but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Wavier.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: March 12, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–8605 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42, 101–45, and 102–40

[FPMR Case 2003–101–1; Docket 2007–001; Sequence 2]

[FMR Case 2003–102–4]

RIN 3090–AH21

Federal Management Regulation; FPMR Case 2003–101–1; FMR Case 2003–102–4, Disposition of Personal Property with Special Handling Requirements

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the Federal Property Management Regulations (FPMR) by revising coverage on the hazardous and certain categories of personal property and moving it into the Federal Management Regulation (FMR) addressing all types of property requiring special handling. A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Interested parties should submit comments in writing on or before June 6, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FPMR case 2003–101–1 by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the FMR case number (for example, FPMR case 2003–101–1) and click on the ''Submit'' button. Please include any personal and/or business information inside the document. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration'', and typing the FMR case number in the keyword field. Select the ''Submit'' button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FPMR case 2003–101–1 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Robert Holcombe, Director, Asset Management (MTA), at (202) 501–3828. Please cite FPMR Case 2003–101–1.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule updates, streamlines, and clarifies FPMR part 101–42 and moves the part into the FMR as part 102–40. This proposed rule also removes §§ 101–45.001, 101–45.002, and 101–45.004. The subject matter of these sections is addressed in section 102–40.190 (disposal of items requiring demilitarization); section 102–40.50 (handling of property reported to GSA so as to preserve civilian utility as far as possible); section 102–40.220 (disposal of gold as a precious metal); and section 102–40.135 (disposal of ATVs).

In addition, this proposed rule removes section 101–45.003 regarding vehicle reconditioning. That section provides guidance that the Federal fleet community considers standard business practices, and is more prescriptive of specific tasks than is intended by this Governmentwide policy regulation.

The proposed rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

Proposed FMR part 102–40 includes the following specific changes from FPMR part 101–42:

1. Proposed section 102–40.30 includes the following terms and definitions not found in section 101–42.001:

Ammunition
Commerce Control List Item (CCLI)
Demilitarization
Material Safety Data Sheet (MSDS)
Medical devices
Precious metal

2. Proposed section 102–40.95 revises FPMR section 101–42.401, Sales responsibilities for hazardous material, by allowing agencies to sell property with special handling requirements.

3. Proposed section 102–40.150 has special requirements for handling asbestos products.

4. Proposed section 102–40.140 introduces the topic of disposal of ammunition which does not appear in part 101–42. The disposition of ammunition and ammunition components are combined in this part 102–40. A new policy contained in part 102–40 allows the sale of ammunition and ammunition components to activities licensed to perform manufacturing/ demanufacturing/ remanufacturing, or licensed to recover basic material content of the ammunition or ammunition components. Expended ammunition cartridge cases may be transferred or donated when the recipient certifies that the cartridge case will be reloaded and used only for law enforcement purposes.

5. Proposed section 102–40.195 has special requirements for handling Commerce Control List items.

6. Proposed part 102–40 incorporates topics that appeared in 41 CFR part 101–45; specifically, the provisions appearing at section 101–45.001, ''Demilitarization and decontamination''; section 101–45.002, ''Gold''; and section 101–45.004, ''All terrain vehicles.'' The subject matter of these sections is addressed in section 102–40.190 (disposal of items requiring demilitarization); section 102–40.50

(handling of property reported to GSA so as to preserve civilian utility as far as possible); section 102–40.220 (disposal of gold as a precious metal); and section 102–40.135 (disposal of ATVs).

This proposed rule removes section 101–45.003 regarding vehicle reconditioning. That section provides guidance that the Federal fleet community considers standard business practices, and is more prescriptive of specific tasks than is intended by this Governmentwide policy regulation.

7. Proposed part 102–40 is less prescriptive. It is GSA's intention to use these FMR regulations to describe ''what'' is to be accomplished, not ''how'' to perform a specific task.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–42, 101–45, and 102–40

Government property management.

Dated: December 11, 2006.

Kevin Messner,

Acting Associate Administrator.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

1. Part 101–42 is revised to read as follows:

PART 101–42—DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

Authority: 40 U.S.C. 121(c).

§ 101–42.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on the disposition of personal property with special handling requirements previously contained in this part, see FMR part 40 (41 CFR part 102–40), Disposition of Personal Property with Special Handling Requirements.

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

2. The authority citation for part 101–45 continues to read as follows:

Authority: 40 U.S.C. 545 and 121(c).

§ 101–45.001 [Removed]

3. Section 101–45.001 is removed.

§ 101–45.002 [Removed]

4. Section 101–45.002 is removed.

§ 101–45.003 [Removed]

5. Section 101–45.003 is removed.

§ 101–45.004 [Removed]

6. Section 101–45.004 is removed.

CHAPTER 102—Federal Management Regulation

7. Part 102–40 is added to subchapter B of chapter 102 to read as follows:

PART 102–40—DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

Subpart A—General Provisions

Sec.

102–40.5 What does this part cover?
102–40.10 What is the governing authority for this part?
102–40.15 Who must comply with the provisions in this part?
102–40.20 To whom do ''we'', ''you'', and their variants refer?
102–40.25 How do we request a deviation from these requirements and who can approve it?

Definitions

102–40.30 What definitions apply to this part?

Subpart B—Responsibilities

102–40.35 What types of personal property require special handling?
102–40.40 What are our responsibilities concerning personal property requiring special handling?
102–40.45 What must we do when we have identified personal property with special handling requirements?
102–40.50 What must we do when we no longer need personal property with special handling requirements?
102–40.55 Do we report all excess personal property with special handling requirements to GSA?
102–40.60 Who is responsible for the custody of hazardous materials and property requiring special handling?
102–40.65 Who is responsible for the care and handling of hazardous materials and property requiring special handling?

Subpart C—Transfer and Donation of Personal Property With Special Handling Requirements

102–40.70 What must we do when reporting excess personal property with special handling requirements?
102–40.75 Is personal property requiring special handling available for transfer or donation?
102–40.80 Is donee certification required on the donation of personal property requiring special handling?
102–40.85 Must we follow additional requirements for the inspection of personal property with special handling requirements?
102–40.90 Who pays for the costs incident to the transfer or donation of personal property with special handling requirements?

Subpart D—Sale of Personal Property With Special Handling Requirements

102–40.95 May we sell personal property with special handling requirements?
102–40.100 May we use any sales method to sell personal property that require special handling?
102–40.105 What must we include in the sales terms and conditions when selling personal property with special handling requirements?
102–40.110 Are certifications required from the purchaser when selling personal property with special handling requirements?
102–40.115 What precautions must we take during the sales process for personal property requiring special handling?
102–40.120 May we dispose of personal property requiring special handling by abandonment or destruction?

Subpart E—Personal Property with Special Handling Requirements

102–40.125 What categories of personal property require special handling?
102–40.130 How do we manage acid-contaminated and explosive-contaminated property?
102–40.135 How do we handle all-terrain vehicles (ATVs)?
102–40.140 How do we handle ammunition?
102–40.145 How do we handle animals and plants?
102–40.150 How do we handle asbestos?
102–40.155 How do we handle controlled substances?
102–40.160 How do we handle drugs, biologicals, and reagents other than controlled substances?
102–40.165 How do we handle electronic products?
102–40.170 How do we handle firearms?
102–40.175 How do we handle hazardous materials?
102–40.180 How do we handle lead-containing paints and items bearing lead-containing paint?

102–40.185 How do we handle medical devices?
102–40.190 How do we handle Munitions List Items (MLIs)?
102–40.195 How do we handle Commerce Control List Items (CCLIs)?
102–40.200 How do we handle national stockpile material?
102–40.205 How do we handle Nuclear Regulatory Commission-controlled materials?
102–40.210 How do we handle ozone depleting substances?
102–40.215 How do we handle polychlorinated biphenyls (PCBs)?
102–40.220 How do we handle precious metals?
102–40.225 How do we handle vehicles not suitable for highway use?
Appendix A Federal Supply Classes (FSC) Composed Predominantly of Hazardous Items
Appendix B Federal Supply Classes and Groups Which Contain A Significant Number of Hazardous Items

Authority: 40 U.S.C. 121(c).

Subpart A—General Provisions

§ 102–40.5 What does this part cover?

This part provides guidance on the transfer, donation, sale and other disposal of Government personal property with special handling requirements located in the United States, the District of Columbia, the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, Federated States of Micronesia, the Marshall Islands, and Palau. For guidance on disposing of personal property located outside these areas, see §§ 102–36.380 through 102–36.400 of this subchapter B.

§ 102–40.10 What is the governing authority for this part?

Section 121(c) of title 40 of the United States Code, Subtitle I—Federal Property and Administrative Services, authorizes the Administrator of General Services to prescribe regulations necessary to perform functions under this part.

§ 102–40.15 Who must comply with the provisions in this part?

All executive agencies must comply with the provisions of this part unless authorized by separate statutory authority to do otherwise. Legislative and judicial agencies are encouraged to follow these provisions.

§ 102–40.20 To whom do ''we'', ''you'', and their variants refer?

The pronouns ''we'', ''you'', and their variants throughout this part refer to the agency.

§ 102–40.25 How do we request a deviation from these requirements and who can approve it?

See §§ 102–2.60 through 102–2.110 of subchapter A to request a deviation from the requirements of this part.

Definitions

§ 102–40.30 What definitions apply to this part?

The following definitions apply to this part:

Acid-contaminated property means property that may cause burns or toxicosis when improperly handled due to acid residues adhering to or trapped within the material.

Ammunition means any device charged with explosives, propellants, pyrotechnics, or nuclear, biological, or chemical material, for use in connection with defense, offense, or demolitions.

Ammunition components means the parts used in ammunition, to include cartridge cases, primers, bullets/projectiles, and propellant powder.

Biologicals means hazardous materials associated with the products and operations of applied biology and biochemistry, especially serums, vaccines, etc., produced from microorganisms.

Commerce Control List Item (CCLI) means property identified on the Commerce Control List (15 CFR part 774) subject to export controls under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) and implemented by the Export Administration Regulations (15 CFR part 730). Items may be placed on the list for reasons of technology transfer, scarcity of materials, crime control, and national security.

Controlled substances means—

(1) Any narcotic, depressant, stimulant, or hallucinogenic drug, or any other drug or substance included in Schedules I, II, III, IV, or V of section 202 of the Controlled Substances Act (21 U.S.C. 812), except exempt chemical preparations and mixtures and excluded substances listed in 21 CFR part 1308;

(2) Any other drug or substance that the Attorney General determines to be subject to control under Subchapter I of the Controlled Substances Act (21 U.S.C. 801 to 904); or

(3) Any other drug or substance that by international treaty, convention, or protocol is to be controlled by the United States.

Demilitarization means, as defined by the Department of Defense (DOD) in the Defense Material Disposition Manual, DOD 4160.21–M (*www.dla.mil/dlaps/dod/416021m/guide.asp*), the act of destroying the military offensive or defensive advantages inherent in certain types of equipment or material. The term includes mutilation, dumping at sea, scrapping, melting, burning, or alteration designed to prevent the further use of this equipment and material for its originally intended military or lethal purpose and applies equally to material in unserviceable or serviceable condition that has been screened through an Inventory Control Point and declared excess or foreign excess.

Explosive-contaminated property means property that may ignite or explode when exposed to shock, flame, sparks, or other high temperature sources due to residual explosive material in joints, angles, cracks, or around bolts.

Extremely hazardous property means property hazardous to the extent that it generally requires special handling such as licensing and training of handlers, protective clothing, and special containers and storage. Because of its extreme flammability, toxicity, corrosivity or other perilous qualities, it could constitute an immediate danger or threat to public health or safety or the environment if released to the general public.

Firearm means any weapon, silencer, or destructive device designed to, or readily convertible to, expel a projectile by the action of an explosive, as defined in Title 26 of the Internal Revenue Code (26 U.S.C. 5845). Excludes antique firearms as defined in 26 U.S.C. 5845(g).

Hazardous material means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA), the Resource Conservation and Recovery Act (RCRA), or the Toxic Substances Control Act (TSCA). Generally, hazardous materials have one or more of the following characteristics:

(1) Has a flash point below 200°F (93.3°C), closed cup, or is subject to spontaneous heating.

(2) Is subject to polymerization with the release of large amounts of energy when handled, stored, or shipped without adequate controls.

(3) In the course of normal operations, may produce fibers, dusts, gases, fumes, vapors, mists, or smokes which have one or more of the following characteristics:

(i) Causes 50 percent fatalities to test animals below 500 mg/kg of test animal weight when a single oral Lethal Dose, 50% (LD50) or semi-lethal dose is used.

(ii) Is a flammable solid or a strong oxidizing or reducing agent.

(iii) Causes first degree burns to skin in a short time exposure, or is systematically toxic by skin contact.

(iv) Has a permissible exposure limit (PEL) below 1000 parts per million for gases and vapors, below 500 mg/mm3 for fumes, or below 2 fibers/CM3 for dust.

(v) Causes occupational chemical dermatitis, which is any abnormality of the skin induced or aggravated by the work environment which includes but is not limited to primary irritant categories, allergic sensitizers, and photo sensitizers.

(4) Is radioactive to the extent it requires special handling.

(5) Is a recognized carcinogen according to Occupational Safety and Health Administration (OSHA) regulations at 29 CFR part 1910.

(6) Possesses special characteristics which, in the opinion of the holding agency, could be hazardous to health, safety, or the environment if improperly handled, stored, transported, disposed of, or otherwise improperly used.

Hazardous waste means those materials the handling and disposal of which are governed by 40 CFR parts 260 through 265 and 268. Hazardous materials generally become hazardous wastes when they are no longer suitable for their intended or valid alternate purpose, or for resource recovery. Some solid (non-hazardous) wastes are predetermined hazardous wastes upon generation (40 CFR part 261, subpart D); some are determined hazardous wastes when they exhibit ignitability, corrosivity, reactivity, or extraction procedure toxicity.

Lead-containing paint means paint or other similar surface coating material containing lead or lead compounds in excess of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

Material Safety Data Sheet (MSDS) means the documentation, as required by 29 CFR 1910.1200, identifying the potential hazards associated with the specific category of product or property. Sources of MSDS information may be the manufacturer, distributor, or the procuring agency.

Medical devices means any health-care product that does not achieve its principle intended purposes by chemical action in or on the body or by being metabolized. Medical devices are categorized in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301–399).

Munitions List Item (MLI) means property, services, and related technical data designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Implementing regulations may be found in 22 CFR parts 120 and 121.

Nuclear Regulatory Commission-Controlled Material means material subject to the controls of the Nuclear Regulatory Commission (NRC). The materials are defined as follows:

(1) *Byproduct material*: Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material. (See 10 CFR part 30).

(2) *Source material*: Uranium or thorium, or any combination thereof, in any physical or chemical form or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material. (See 10 CFR part 40).

(3) *Special nuclear material*: Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, any other materials which the NRC, pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), including any amendments thereto, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material. (See 10 CFR part 70).

Perishable means an item subject to rapid deterioration or spoilage when removed from special storage conditions or care, such as fresh food, animals, and plants.

Precious metal means gold, silver, and platinum group metals (platinum, palladium, iridium, rhodium, osmium, and ruthenium).

Reagent means any hazardous material used to detect or measure another substance or to convert one substance into another by means of the reactions it causes.

Subpart B—Responsibilities

§ 102–40.35 What types of personal property require special handling?

Personal property containing hazardous materials or other elements that require compliance with Federal, State, and local laws in their usage, storage, transportation and disposal, and the inadequate control of which may lead to potential safety, health, environmental, economic, or national security risks.

§ 102–40.40 What are our responsibilities concerning personal property requiring special handling?

You are responsible for—

(a) Identifying and accounting for property with special handling requirements;

(b) Complying with applicable Federal, State, and local laws and regulations concerning the handling, storage, labeling, use, and final disposition of such property;

(c) Ensuring adequate storage and safeguard of such property, *e.g.*, secured or limited access storage areas, warning signs, and protective clothing and equipment; and

(d) Transporting materials requiring special handling in accordance with Department of Transportation (DOT), Environmental Protection Agency (EPA), and State and local regulations.

§ 102–40.45 What must we do when we have identified personal property with special handling requirements?

You must properly mark, tag, or label personal property with special handling requirements in accordance with applicable Federal law, including the Occupational Safety and Health Administration requirements (29 CFR 1910.1200), regarding the actual or potential hazard associated with the property, and ensure that such information is maintained and perpetuated in the official agency property records. Labeling requirements for substances that are excluded from the requirements of 29 CFR 1910.1200 are found in the references listed in 29 CFR 1910.1200(b)(5) and (6).

§ 102–40.50 What must we do when we no longer need personal property with special handling requirements?

Except for the items listed in § 102–40.55, you must report personal property with special handling requirements that you no longer need to the General Services Administration (GSA) for Federal or donation screening. Dispose of property not required to be reported to GSA in accordance with applicable Federal, State, and local laws and regulations, and your agency procedures. Disposal must be accomplished so as to preserve as much as possible any civilian utility or commercial value of the property.

§ 102–40.55 Do we report all excess personal property with special handling requirements to GSA?

No. Because of their characteristics, certain items are not subject to the usual disposal procedures. You should not report to GSA excess personal property with special handling requirements in any of the categories listed below.

(a) *Extremely hazardous personal property.* You must dispose of extremely hazardous personal property not reported to GSA in accordance with applicable demilitarization requirements, EPA regulations, State

and local laws or regulations, and other Federal laws, regulations or guidelines.

(b) *Hazardous wastes.* You must dispose of hazardous wastes in accordance with applicable demilitarization requirements, EPA regulations, State and local laws or regulations, and other Federal laws, regulations or guidelines.

(c) *Perishables.* You may dispose of perishables by abandonment/destruction when it is not detrimental to public health or safety. See the abandonment/destruction provisions in part 102–36 of this subchapter B.

(d) *EPA research materials.* The EPA, under its independent authority, may transfer accountability for hazardous materials deemed by EPA to be research materials to Federal, State, and local agencies, research institutions, or commercial businesses to conduct research or to perform the actual cleanup of a contaminated site.

§ 102–40.60 Who is responsible for the custody of hazardous materials and property requiring special handling?

The holding agency is responsible for the custody of hazardous materials and property requiring special handling. Custody of these items may be transferred in whole or in part to another Federal agency with that agency's consent.

§ 102–40.65 Who is responsible for the care and handling of hazardous materials and property requiring special handling?

The holding agency is responsible for the care and handling of hazardous materials and property requiring special handling until the time the property has completed the disposal process; and has been transferred, donated, sold, or destroyed, as authorized by this part. The nature of this material may require extra precautions, processes, or equipment, thereby increasing the cost of care and handling.

Subpart C—Transfer and Donation of Personal Property With Special Handling Requirements

§ 102–40.70 What must we do when reporting excess personal property with special handling requirements?

You must include with your report of excess a complete description of the characteristics of the property, use or disposal restrictions, and the actual or potential hazard associated with the use, handling, or storage of the item. You should include a Material Safety Data Sheet (MSDS) or Hazardous Material Information System (HMIS) record (or equivalent) if available. The physical item which requires special handling must also be marked so as to identify its special characteristic.

§ 102–40.75 Is personal property requiring special handling available for transfer or donation?

Generally, yes, with the exceptions contained in this part, personal property requiring special handling is available for transfer or donation in accordance with 41 CFR parts 102–36 and 102–37 of this subchapter B respectively. However, all transfer and donation documents must include a complete description of the actual or potential hazard associated with the handling, storage, use, or disposal of the item.

§ 102–40.80 Is donee certification required on the donation of personal property requiring special handling?

Yes, GSA will not approve a donation to a State Agency for Surplus Property (SASP) unless an eligible donee has been identified. The transfer document must contain a full description of the actual or potential hazard(s) and restriction(s) associated with the handling, storage, use, transportation, or disposal of the item. In addition, the following certification (or an equivalent) must be signed by the donee:

I (We), the undersigned, hereby certify that the donee has knowledge and understanding of the hazardous nature of the property hereby donated and will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, and disposal of the hazardous material(s). The donee agrees and certifies that the United States shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the hazardous material(s) or its final disposition. Additionally, the donee agrees and certifies to hold the United States harmless from and shall indemnify the United States against any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the hazardous material(s), its use, or final disposition.

_____

Name of Donee (print or type)

_____

Signature of Donee

§ 102–40.85 Must we follow additional requirements for the inspection of personal property with special handling requirements?

Yes, you are responsible for establishing appropriate safeguards and providing instructions for personal protection to screeners who are inspecting property with special handling requirements.

§ 102–40.90 Who pays for the costs incident to the transfer or donation of personal property with special handling requirements?

You may charge the Federal agency or donation recipient any costs you incurred in packing, preparing for shipment, and transporting property with special handling requirements (see parts 102–36 and 102–37 of this subchapter B).

Subpart D—Sale of Personal Property With Special Handling Requirements

§ 102–40.95 May we sell personal property with special handling requirements?

Generally, yes, you may sell personal property with special handling requirements when you (1) comply with applicable Federal, State, and local laws and regulations, including 41 CFR part 102–38, and (2) follow applicable precautions including but not limited to proper packaging of the property, labeling of appropriate warning signs, and allowing for inspection of the property with proper safeguards.

§ 102–40.100 May we use any sales method to sell personal property that requires special handling?

Yes, you may use any of the sales methods provided in part 102–38 of this subchapter B, but you must—

(a) Hold sales of such property separately from other sales,

(b) Store and display such property in a safe and controlled manner as required by applicable statutes or regulations,

(c) Indicate if the property is being sold only for scrap, and/or if there are any use requirements, and

(d) Comply with the requirements of other Federal, State, and local laws and regulations.

§ 102–40.105 What must we include in the sales terms and conditions when selling personal property with special handling requirements?

In addition to the recommended sales terms and conditions contained in part 102–38 of this subchapter B, when selling personal property with special handling requirements you must include the following in the sales terms and conditions:

(a) A full description of the actual or potential hazard(s) associated with handling, storage, or use of the item, as well as any use restrictions or limitations.

(b) A MSDS, when available.

(c) A certification, executed by a duly authorized agency official, that the item is appropriately labeled and packaged in accordance with applicable regulatory and statutory requirements.

(d) Any additional requirements the purchaser must comply with prior to removal, *e.g.*, demilitarization on-site.

(e) The necessary steps the purchaser must take in the handling and transportation of the property when the property is sold.

(f) A statement that it is the purchaser's responsibility to comply with all applicable Federal, State, local, and export laws and regulations to ensure the proper registration, licensing, possession, transportation, and subsequent use, resale or disposal of the property. You must use the following certification (or an equivalent certification) when offering for sale an item requiring special handling. Failure to sign the certification may result in the bid being rejected as nonresponsive:

The undersigned bidder hereby certifies that if awarded a contract under this invitation for bids, the bidder will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, or other use of the material hereby purchased. The bidder will hold the United States harmless from and indemnify the United States against any or all debts, liabilities, judgments, costs, demands, suits, actions, or other claims of any nature arising from or incident to the handling, use, storage, shipment, resale, export, or other disposition of the items purchased.

_____

Name of bidder (print or type)

_____

Signature of bidder

§ 102–40.110 Are certifications required from the purchaser when selling personal property with special handling requirements?

Yes, in addition to receiving a certification that the purchaser will comply with all Federal, State, and local laws and regulations with respect to the care, handling, storage, shipment, and disposal of personal property with special handling requirements, you must obtain from the purchaser a certification that the purchaser will comply with any additional requirements associated with the property, such as demilitarization, export controls on Commerce-controlled list items, or mutilation requirements for flight safety critical aircraft parts.

§ 102–40.115 What precautions must we take during the sales process for personal property requiring special handling?

It is your responsibility to prepare items with special handling requirements for sale, provide all necessary information to ensure that prospective bidders are informed of hazards, and identify precautions that bidders should take to protect themselves while inspecting, packing or moving items with special handling requirements. You must make any safety gear or equipment needed during the sales process available to prospective bidders and others involved in the inspection, packing, or moving of these items.

§ 102–40.120 May we dispose of personal property requiring special handling by abandonment or destruction?

Yes, you may dispose of personal property requiring special handling by abandonment or destruction. However, in addition to the requirements for the abandonment or destruction of property in §§ 102–36.305 through 102–36.330 of this subchapter B, you must also satisfy applicable Federal, State, and local waste disposal and air and water pollution control standards, laws, and regulations. You must ensure that such property, including empty hazardous material containers, not be abandoned until made safe, demilitarized, reduced to scrap, or otherwise made innocuous. National security classified items must be declassified or destroyed in accordance with holding agency regulations.

Subpart E—Personal Property With Special Handling Requirements

§ 102–40.125 What categories of personal property require special handling?

Many categories of personal property have special handling requirements in compliance with applicable Federal, State, and local regulations and ordinances for their handling, transportation, storage, disposal and use. See Appendix A to this part for a listing of Federal Supply Classifications (FSCs) containing predominately hazardous items and Appendix B to this part for a listing of FSCs containing a significant number of hazardous items. See §§ 102–40.130 through 102–40.225 for special handling instructions for some categories of property that Federal property managers are likely to have responsibility for.

§ 102–40.130 How do we manage acid-contaminated and explosive-contaminated property?

Acid-contaminated or explosive-contaminated property is considered extremely hazardous property and is not reported to GSA for subsequent transfer or donation. You may dispose of such property by sale, in accordance with subpart B of this part and with the condition that the purchaser sufficiently decontaminates the property to the degree that it is no longer extremely hazardous. When selling acid or explosive contaminated property, the sales terms and sales documentation must both include the following certification, or an equivalent certification, which must be signed by the successful bidder.

It is hereby certified that the undersigned purchaser will comply with all the applicable Federal, State, and local laws, ordinances and regulations with respect to the care, handling, storage, and shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials. This certification is made in accordance with and subject to the penalties of title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

_____

Name of purchaser (print or type)

_____

Signature of purchaser

§ 102–40.135 How do we handle all-terrain vehicles (ATVs)?

Three-wheeled and four-wheeled all terrain vehicles (ATVs) can be exchanged with a dealer under the provisions of part 102–39 of this subchapter B. ATVs may be offered for sale as either salvage or scrap only after they have been mutilated in a manner to prevent operational use.

§ 102–40.140 How do we handle ammunition?

(a) Report usable ammunition to GSA for possible transfer to a Federal agency. You must not donate surplus ammunition, but you may donate surplus ammunition components. You may sell ammunition and ammunition components only to companies licensed to perform manufacturing/demanufacturing/remanufacturing processes under the provisions of 18 U.S.C. 923 or other Federal law or regulation. You must follow any demilitarization requirements. When selling ammunition components, the sales terms and sales documentation must both include the following certification, or an equivalent certification, which must be signed by the successful bidder:

Item No. _____ contains ammunition components offered for sale in this invitation. The undersigned certifies that he/she will comply with all applicable local, State, and Federal laws and regulations concerning ammunition components. If the item being sold is scrap ammunition components, the undersigned certifies that these scrap ammunition components will not be used for the original manufactured purpose.

_____

Name of bidder (print or type)

_____

Signature of bidder

(b) Expended ammunition cartridge cases may be transferred or donated when the recipient certifies that the

spent brass will be reloaded and used only for law enforcement purposes.

(c) The transportation of primers or propellant powder is governed by 49 CFR parts 171 through 180.

§ 102–40.145 How do we handle animals and plants?

When possible, you should report live animals and plants to GSA for transfer, donation, or sale. They are, however, considered perishables and could be immediately disposed of by abandonment/destruction procedures in accordance with abandonment/destruction authority in 41 CFR part 102–36 of this subchapter B. Unfit horses and mules may be destroyed or put out to pasture in accordance with 40 U.S.C. 1308. Under 40 U.S.C. 555, you may donate canines formerly used in the performance of law enforcement duties to an individual experienced in handling canines in the performance of those duties.

§ 102–40.150 How do we handle asbestos?

(a) Items with asbestos content must be handled in accordance with the EPA regulations found at 40 CFR part 61 subpart M.

(b) Report to GSA excess personal property containing nonfriable asbestos, as defined in 40 CFR 61.141, for subsequent transfer, donation or sale in accordance with part 102–36 of this subchapter B. Nonfriable asbestos materials cannot (1) when dry; be crumbled, pulverized, or reduced to powder by hand pressure, or (2) contain asbestos which is bonded or otherwise rendered unavailable for release into the atmosphere through normal usage. All documentation on excess personal property containing nonfriable asbestos, such as reporting, transfer, and sales documents, must include a warning statement that the item may contain asbestos and must not be cut, crushed, sanded, disassembled, or otherwise altered. The property must also be labeled or marked with such warning statements.

(c) You must use a warning such as the following on the documentation reporting the excess or transferring an item containing asbestos:

WARNING

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property. End users and new owners, if transferred, should be warned. OSHA standards for personnel protection are codified at 29 CFR 1910.1001. EPA disposal standards are codified at 40 CFR part 61. State and local authorities may have additional restrictions on the disposal of items containing asbestos.

(d) Property containing asbestos should be labeled with a warning such as the following:

WARNING

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disa- ssembling, or otherwise altering this property.

(e) Nonfriable asbestos that is not transferred, donated, or sold may be abandoned as provided in §§ 102–36.305 through 102–36.330 of this subchapter B. If destroyed by burial, items containing friable or nonfriable asbestos must be disposed of by burial at a site that meets the requirements of 40 CFR 61.154.

§ 102–40.155 How do we handle controlled substances?

(a) You are not required to report excess controlled substances to GSA, but you should make reasonable efforts to transfer them to Federal agencies in accordance with Drug Enforcement Administration (DEA) regulations (21 CFR 1307.22). The recipient agency must certify that it is authorized to procure the particular controlled substance and provide the registration number on the Certificate of Registration, issued by DEA.

(b) You must not donate controlled substances.

(c) In accordance with sales procedures specified in part 102–38 of this subchapter B, and under the conditions specified in this subsection (c), you may sell controlled substances by sealed bid only to bidders who have registered with DEA to manufacture, distribute, or dispense the particular controlled substance. As a condition of sale the bidder must submit verification of DEA registration. Prior to finalizing the sale, you must obtain confirmation from DEA of the bidder's status as a registered manufacturer, distributor, or dispenser of controlled substances.

(1) The following statement, or an equivalent statement, must be included in the sales terms and conditions when selling controlled substances:

The bidder shall complete, sign, and return with his/her bid the certificate as contained in this invitation. No award will be made or sale consummated until after this agency has obtained from the Drug Enforcement Administration, Department of Justice, verification that the bidder is registered to manufacture, distribute, or dispense those controlled substances which are the subject of the award.

(2) The following certification, or an equivalent certification, must be made a part of the Invitation for Bid to be completed and signed by the bidder and returned with the bid. Failure to sign the certification may result in the bid being rejected as nonresponsive:

The undersigned bidder certifies that he/she is Registered with the Drug Enforcement Administration, Department of Justice, as a manufacturer, distributor, or dispenser of the controlled substances for which a bid is submitted and the registration number is: _____.

_____
Name of bidder (print or type)

_____
Signature of bidder

_____
Address of bidder (print or type)

_____
City, State, Zip code

(d) You must not abandon controlled substances. You must destroy controlled substances in such a manner as to ensure total destruction to preclude any further use, and ensure such destruction is in compliance with DEA regulations, 21 CFR 1307.21, or other procedures approved by DEA, and coordinate with local air and water pollution control authorities when required. Destruction must be witnessed and certified by two employees of your agency.

The following certification, or an equivalent certification, must be used to document the destruction of controlled substances;

We, the undersigned, have witnessed the destruction of the (controlled substance(s)) described herein and in the manner and on the date stated herein:

_____ _____
Witness Date

_____ _____
Witness Date

§ 102–40.160 How do we handle drugs, biologicals, and reagents other than controlled substances?

(a) Drugs, biologicals, and reagents other than controlled substances may be transferred to another Federal agency for official purposes under procedures specified in part 102–36 and this subchapter B. For donation of drugs, biologicals, or reagents other than controlled substances, follow the procedures in part 102–37 of this subchapter B.

(b) Drugs, biologicals, and reagents other than controlled substances must be clearly identified when they are unfit for human use. As a general rule, you must destroy drugs, biologicals, and reagents unfit for human use, with destruction witnessed and certified by two representatives of your agency, and coordinated with local air and water pollution control authorities, when required. However, you may report such property to GSA for subsequent transfer or donation for the purpose of animal experimental use when the property is unfit due to expired shelf life. The following certification, or an equivalent

certification, must be used to document the destruction of drugs, biologicals, and reagents;

We, the undersigned, have witnessed the destruction of the (drugs, biologicals, and reagents) described in the foregoing certification in the manner and on the date stated herein:

_____ _____
Witness Date

_____ _____
Witness Date

(c) The sale of any unexpired drugs, biologicals, or reagents must be in accordance with rules published by the Food and Drug Administration (*www.fda.gov*). You may sell drugs, biologicals, and reagents other than controlled substances only to those entities legally qualified to engage in the sale, manufacture, or distribution of such items and a certification or evidence of licensing must accompany the bids. An entity is legally qualified when a Federal agency (*e.g.*, the Department of Health and Human Services, the Drug Enforcement Administration, or the Department of Agriculture) or State agency having legal or regulatory oversight over that commodity has approved the entity to engage in the designated activity.

(1) When selling drugs, biologicals, and reagents other than controlled substances, the following condition of sale (or an equivalent condition of sale) must be used:

The bidder shall complete, sign, and return with his/her bid the certification as contained in this invitation. No award will be made or sale consummated until after this agency has determined that the bidder is legally licensed to engage in the manufacture, sale, or distribution of drugs.

(2) The following certification, or an equivalent certification, must be made a part of the invitation for bids (and contract), to be completed and signed by the bidder, and returned with the bid with a copy of his/her license. Failure to sign the certification may result in the bid being rejected as nonresponsive.

The undersigned bidder certifies that he/she is legally licensed to engage in the manufacture, sale, or distribution of drugs, and proof of his/her license to deal in such materials is furnished with this bid.

_____
Name of bidder (print or type)

_____
Signature of bidder

_____
Address of bidder (print or type)

_____
City, State, Zip code

(d) Drugs, biologicals, and reagents that are controlled substances are subject to the same provisions as controlled substances in lieu of the provisions in this section.

§ 102–40.165 How do we handle electronic products?

(a) In accordance with the procedures in this section, excess electronic items for which radiation safety performance standards are prescribed by FDA under 21 CFR part 1010 must be reported to GSA for transfer to Federal agencies in accordance with part 102–36 of this subchapter B and may be donated or sold in accordance with parts 102–37 and 102–38 of this subchapter B, respectively. (See 21 CFR 1000.15 for items of electronic items that are required to follow radiation safety performance standards.) For items not meeting safety performance standards, excess reports must include a statement that the items are not in compliance with applicable radiation safety performance standards. Sales documents must also clearly warn purchasers that the items may not be in compliance with FDA radiation safety performance standards prescribed under 21 CFR part 1010 and that the purchaser assumes all risks associated with the use or resale of the items. The following type of warning may be placed on the sales documentation:

WARNING

Purchasers are warned that the item purchased herewith may not be in compliance with Food and Drug Administration radiation safety performance standards prescribed under 21 CFR part 1010, and use may constitute a potential for personal injury unless modified. The purchaser agrees that the United States shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the United States harmless from and shall indemnify the United States against any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item. The purchaser agrees to notify any subsequent purchaser of this property of the potential for personal injury in using this item without a radiation survey to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1010.

(b) In accordance with 21 CFR 1002.40 and 1002.41 (Dealer and Distributor Records), when you sell electronic products for which there are performance standards (listed in 21 CFR part 1010) you must obtain from the purchaser and forward to the appropriate manufacturer (unless authorized by 21 CFR 1002.4 to have the dealer or distributor hold and preserve) the following information:

(1) Name and address.

(2) Product name, to include brand name, model number, serial or other identification number.

(3) Date of sale, award, or lease.

(c) You must dispose of electronic equipment in accordance with all Federal and State laws, including the Solid Waste Disposal Act (42 U.S.C. 6901, *et seq.*) and Executive Order 13101. You should also be aware of the prohibitions and liabilities contained in 42 U.S.C. 9607.

§ 102–40.170 How do we handle firearms?

(a) You must submit reports and transfer documents on excess firearms to GSA (7FP–8), Denver, CO 80225–0506. GSA will approve transfers of firearms only to those Federal agencies authorized to acquire firearms for official use, and may require additional written justification from the requesting agency.

(b) GSA may donate only surplus hand guns, rifles, shotguns, and individual light automatic weapons previously used by the Federal Government, with less than .50 caliber in Federal Supply Classification (FSC) 1005, and rifle and shoulder fired grenade launchers in FSC 1010, with a disposal condition code of 4 or better (see condition codes in § 102–36.240 of this subchapter B). Only eligible law enforcement entities whose primary function is the enforcement of applicable Federal, State, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest, may obtain these donated firearms for law enforcement purposes.

(c) For purposes of donation under subsection (b) above, each Standard Form (SF) 123 must be accompanied by a conditional transfer document, signed by both the intended donee and the State Agency for Surplus Property (SASP), that includes the special terms, conditions, and restrictions prescribed by GSA, and any other required forms or information. Restrictions on donated firearms are perpetual and may not be amended by the SASP without prior written approval from GSA. You must release or ship donated firearms directly to the designated donee.

(d) When authorized by circumstances described in paragraphs (e), (f), (g), or (i) of this section, the destruction of firearms must be performed by an activity authorized by your agency head or designee. The destruction must be witnessed by two additional agency employees authorized by the agency head or designee.

(e) When the approved donee no longer needs the donated firearms, the donee must notify the SASP. The SASP

may, with GSA approval, reassign firearms to another donee within the State or to a donee in another state through the appropriate SASP. In such a case, transfer of the firearms must be between eligible donees only. No SASP is eligible to take custody of the firearm. Otherwise, the donee and a representative from the SASP, or designee, must witness destruction of the firearms and complete and sign a certificate of destruction, which will be maintained by the SASP.

(f) You must not abandon firearms. You must destroy unneeded firearms by crushing, cutting, breaking, or deforming each firearm in a manner to ensure that each firearm is rendered completely inoperative. Destruction of firearms must be performed as stated in paragraph (d).

(g) You must not dispose of firearms under an exchange/sale transaction or by sale. Surplus firearms may be sold only for scrap after total destruction as described in (f) above to ensure that the firearms are rendered completely inoperative and to preclude their being made operative. Such sale shall be conducted under part 102–38 of this subchapter B.

(h) Firearms received as foreign gifts may be offered for transfer to Federal agencies or sold to the gift recipient in accordance with part 102–42 of this subchapter B.

(i) Firearms that are forfeited, voluntarily abandoned, or unclaimed as described in 40 U.S.C. 1306 and 40 USC 552, must be reported to GSA for disposal in accordance with § 102–41.195 of this subchapter B. The GSA will direct the disposition of these firearms under this section.

§ 102–40.175 How do we handle hazardous materials?

(a) You may use any of the following methods for the identification of hazardous materials:

(1) As part of the process under current acquisition standards, manufacturers must provide MSDSs to document potential hazards. MSDSs are also prescribed by OSHA under 29 CFR part 1910 and Executive Order 12196 paragraph 1–602(c), Occupational Safety and Health Programs for Federal Employees (February 26, 1980).

(2) An automated database maintained by GSA Federal Supply Service contains MSDS for all GSA-procured hazardous materials. To request an MSDS, you may send an e-mail to *MSDS@gsa.gov*, or call, Toll Free: 866–588–7659, DSN: 465–5097, or Commercial: 816–926–5097.

(3) A collection of MSDS information in DOD's Hazardous Materials Information System (HMIS) provides transportation and disposal information.

(4) Appendix A to this part contains a list of the Federal Supply Classification (FSC) classes of property that are composed predominantly of hazardous items.

(5) When information is not available under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, contact the manufacturer, the procuring agency, or your technical staff for assistance in obtaining the MSDS information.

(b) You must verify items with an expired shelf life or reclassify them as hazardous wastes when required by Federal, State, or local environmental laws or regulations.

(c) For transportation of hazardous materials, see 49 CFR parts 171 through 180.

(d) For disposal of hazardous materials, see §§ 102–40.50 through 102–40.120.

(e) Unless authorized by GSA, extremely hazardous property may not be sold unless it is rendered innocuous, mutilated, or otherwise made safe. You should, however, render such property innocuous in a manner so as to preserve the maximum utility or commercial value of the property when possible.

§ 102–40.180 How do we handle lead-containing paints and items bearing lead-containing paint?

(a) You may transfer, donate, or sell such items in compliance with requirements found in the Consumer Product Safety Commission regulations set forth in 16 CFR part 1303. You must not abandon banned items or their containers. You must destroy them. Any removal (stripping) of lead paint incident to disposal must be accomplished in conformance with Federal regulations and industry guidelines such as those promulgated by the EPA (*http://www.epa.gov*) or OSHA (*http://www.osha.gov*).

(b) If disposal of the items described in paragraph (a) is allowable, the following must be placed on the items:

(1) The following warning:

WARNING

Contains Lead. Dried Film of This Paint May be Harmful If Eaten or Chewed.

(2) The following additional statement or its practical equivalent on their labels:

Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children. Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

Keep Out of Reach of Children

(c) Donation documentation (including the Standard Form 123) must contain the following certification, or an equivalent certification:

The property requested herein shall be used only as specified in 16 CFR 1303.3 and in no case shall be in contact with children. I, the undersigned, agree the United States shall not be liable for personal injuries to, disabilities of, or death of the donee's employees, or any other person arising from or incident to the donation of this property, its use, or its final disposition; and to hold the United States harmless from and shall indemnify the United States against any or all debts, liabilities, judgments, costs, demands, suits, actions or claims of any nature arising from or incident to the donation of this property, its use, or its final disposition.

_____

Name of donee (print or type)

_____

Signature of donee

(d) When selling lead-containing paint or items bearing lead-containing paint, the sales terms and sales documentation must include this certification, or an equivalent certification. Failure to sign the certification where it appears as a sales term may result in the bid being rejected as nonresponsive:

I, the undersigned,certify that I have read and fully comprehend the aforementioned terms and conditions of this sale. I shall comply with the applicable Consumer Product Safety Commission regulations set forth in 16 CFR part 1303 if I am the successful bidder. I further agree the United States shall not be liable for personal injuries to, disabilities of, or death of any persons arising from or incident to the sale of this property, its uses, or its final disposition; and to hold the United States harmless from and shall indemnify the United States against any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the sale of this property, its use, or its final disposition.

_____

Name of bidder (print or type)

_____

Signature of bidder

§ 102–40.185 How do we handle medical devices?

(a) Medical devices are subject to the laws and regulations administered by FDA. Provisions of the governing statute, the Federal Food, Drug and Cosmetic Act, appear in 21 U.S.C. 301–399. In summary, the Act prohibits the movement in interstate commerce of medical devices that are adulterated or misbranded (21 U.S.C. 351–352). The Act authorizes FDA to initiate criminal enforcement proceedings against companies and/or individuals responsible for violations of its provisions, and to initiate civil proceedings to seize or enjoin the distribution of such items.

(b) Prescription devices are subject to additional Federal, State, local, and other applicable laws. Federal law requires that prescription devices be in the possession of either: persons lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such device; or, practitioners licensed by their States. Federal law also requires that prescription devices be sold only to, or on the prescription or order of, a licensed practitioner for use in the course of his or her professional practice, and that the devices are labeled in a specific manner.

(c) Non-Federal recipients must certify in writing that such property will be used, resold or transported in conformance with FDA regulations. Any proposed destruction of medical equipment must be coordinated with local health and sanitation officials.

§ 102–40.190 How do we handle Munitions List Items (MLIs)?

(a) Munitions List Items (MLIs) are listed in 22 CFR part 121. A system of demilitarization codes identifies the extent of alteration or destruction necessary when transferring or selling MLIs. The appropriate code is normally assigned to items when they enter the DOD supply system. These items may require demilitarization when issued to any non-DOD entity, and will require Department of State approval and appropriate licensing when exported from the U.S. Refer to DOD 4160.21–M–1 (Change No. 1) for a complete description of the program and the requirements to be followed. The manual is available from the Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060; or electronically at *http://www.dla.mil/dlaps/dod/416021m/guide.asp*.

(b) When disposing of MLIs, you must perpetuate these demilitarization codes; alert those to whom you are transferring or selling property that the item may require demilitarization; and perform any required demilitarization, or provide any documentation or certifications in accordance with the DOD demilitarization manual, DOD 4160.21–M–1 (Change No. 1).

§ 102–40.195 How do we handle Commerce Control List Items (CCLIs)?

(a) Commerce Control List Items (CCLIs) are subject to the controls of 15 CFR parts 738 and 774. Export licenses are required for transfer of items to the countries listed in 15 CFR part 738, Supp. No. 1. CCLIs may also be identified by the demilitarization code assigned to the item in the DOD supply system.

(b) When disposing of CCLIs, you must notify the recipient that the item, may be subject to Department of Commerce export licensing requirements when transported out of the U.S., for reasons of national security, crime control, technology transfer and scarcity of materials. Furthermore:

(1) The recipient must be notified that this notification must pass to all subsequent recipients of the item.

(2) When being sold, completed end-use certificates are required of all offerors or bidders. An end-use certificate is a statement signed by a prospective recipient indicating the intended designation and disposition of CCLIs to be acquired, and acknowledging U.S. export licensing requirements.

(3) All disposal activity must conform to the requirements of 15 CFR parts 730 through 774.

§ 102–40.200 How do we handle national stockpile material?

In accordance with 40 U.S.C. 113(e)(6), materials acquired for the national stockpile, the supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093), are not covered by the Federal Management Regulation. The policy covering the disposal of these assets is found at 50 U.S.C. 98d and 98e.

§ 102–40.205 How do we handle Nuclear Regulatory Commission-controlled materials?

The Nuclear Regulatory Commission (NRC) has exclusive control over licensing, use, transfer, and disposition of NRC-controlled materials (see Chapter 1 of 10 CFR). Direct all inquiries to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

§ 102–40.210 How do we handle ozone depleting substances?

The Clean Air Act, as amended (42 U.S.C. Subchapter VI) requires certain substances which have destructive effects on the ozone layer not be vented to the environment and be phased out from production and use over an extended period of time. An overview of laws and regulations covering the use and disposal of ozone depleting substances can be found at the EPA website: *www.epa.gov/ozone*.

§ 102–40.215 How do we handle polychlorinated biphenyls (PCBs)?

(a) In accordance with EPA regulations (40 CFR 761.1 and 761.3),property defined by EPA as excluded polychlorinated biphenyl (PCB) products may be transferred, donated, or sold in accordance with parts 102–36, 102–37, or 102–38 of this subchapter B. For additional guidance on PCB classifications and other Federal restrictions, contact: Director, National Program Chemicals Division (NPCD), (7404), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Avenue, NW., Washington, DC or visit the EPA's website at: *http://www.epa.gov/epahome/lawregs.htm*. You should also contact State regulatory agencies since some States regulate at a stricter level than the Federal Government.

(b) Property defined by the EPA in 40 CFR 761.3 as either a PCB item or PCB must be labeled or marked with a warning statement that the item contains PCB and must be handled and disposed of in accordance with EPA regulations (40 CFR part 761), Department of Transportation (DOT) regulations (49 CFR parts 171 through 180), and applicable State laws.

(1) PCB items and PCBs may be transferred or donated, provided:

(i) The items are intact, non-leaking, and totally enclosed.

(ii) The recipient provides to you the specific authorization covering the use of this item from 40 CFR part 761

(iii) The recipient certifies to you that the item will be handled and disposed of in accordance with EPA regulation 40 CFR part 761, DOT regulation 49 CFR parts 171 through 180, and applicable Federal and State laws.

(2) PCB and PCB items not transferred or donated must be disposed of under EPA regulations. You must not sell any PCB or PCB item unless 40 CFR part 761 authorizes the sale and continued use of the specific item.

(c) You must not transfer, donate, or sell items with an unknown level of concentrations of PCBs.

(d) Property containing PCBs and PCB items should be labeled with a warning such as the following:

Caution— This item contains PCBs (polychlorinated biphenyls), a toxic environmental contaminant requiring special handling and disposal in accordance with the U.S. Environmental Protection Agency regulation (40 CFR part 761), applicable State laws, and 41 CFR 102–40.215. For proper disposal information, contact the nearest EPA office. For transportation requirements, see 49 CFR parts 171 through 180.

(e) The State Agencies for Surplus Property must have the following certification, or an equivalent certification, on all transfer paperwork where PCBs are involved.

WARNING AND CERTIFICATION

The undersigned donee is aware that the item(s) listed as containing polycholorinated biphenyls (PCBs), a toxic environmental contaminant, require(s) special handling and

disposal in accordance with U.S. Environmental Protection Agency regulation (40 CFR part 761) and U.S. Department of Transportation regulations codified in 49 CFR parts 171 through 180. The donee certifies that this item (or these items) will be handled and disposed of in accordance with applicable Federal statutes and regulations and applicable State laws.

_____
Name of donee (print or type)

_____
Signature of donee

§ 102–40.220 How do we handle precious metals?

(a) You must identify activities in your organization that generate precious metals; recover precious metals created from work processes, such as photographic film developing, and identify equipment or materials containing recoverable precious metals; and adequately control precious metals in your custody. You may contact the Defense Logistics Service Center if you wish to participate in the DOD precious metals recovery program. You may acquire recovered fine precious metals as Government Furnished Material or for other authorized uses by submitting a request to the Commander, Defense Industrial Supply Center (DISC), Attention: DISC-OIBA/YC, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111–5096.

(b) Gold will be sold in accordance with this subpart and part 102–38 of the Federal Management Regulation.

(c) Sales of gold will be processed as follows:

(1) Use the sealed bid method of sale;

(2) Require a 20 percent bid deposit;

(3) Certify all forms of bid deposit and payments; and

(4) Include in the invitation for bids only gold and such other precious and semiprecious materials as may be available for sale at that time.

§ 102–40.225 How do we handle vehicles not suitable for highway use?

Some Government-owned vehicles might receive such extensive damage as a result of an accident, event, or other activity that makes them no longer suitable for donation or sale for highway use. Such vehicles may only be donated or sold for salvage or scrap. Prior to disposal of damaged vehicles, you must evaluate known damage to determine their suitability for continued highway use. When a determination is made that a vehicle is unfit for continued highway use, you must include such information in the property record and subsequent reports. When selling such vehicles, provide an appropriate warning statement in the solicitation regarding vehicle condition that the vehicle cannot be titled for highway use. Use Standard Form 97A, Certificate to Obtain a Non-Repairable or Salvage Certificate when donating or selling vehicles not suitable for highway use. See FMR 102–34.315 if the vehicle is not designed or not legal for operation on highways.

Appendix A—Federal Supply Classification (FSC) Composed Predominantly of Hazardous Items

FSC	Nomenclature
6810	Chemicals
6820	Dyes
6830	Gases: Compressed & liquefied
6840	Pest control agents & disinfectants
6850	Misc. chemical specialties
7930	Cleaning & polishing compounds & preparations
8010	Paints, dopes, varnishes, & related products
8030	Preservative & sealing compounds
8040	Adhesives
9110	Fuels, solid
9130	Liquid propellants & fuels, petroleum case
9135	Liquid propellant fuels & oxidizers, chemical base
9140	Fuel oils
9150	Oils & greases: cutting, lubricating, & hydraulic
9160	Misc. waxes, oils, & fats

Appendix B—Federal Supply Classes and Groups Which Contain a Significant Number of Hazardous Items

Note: If an item is determined to be hazardous material as defined in § 102–40.30, a Material Safety Data Sheet (or equivalent) should accompany the item even though the Federal Supply Class or Group is not listed in this table.

Federal Supply Class/Group	Title	Examples of Hazardous materials requiring identification
1370	Pyrotechnics	Warning fuse, fire starter
1375	Demolition materials	Explosive device
2520	Vehicular power transmission components	Items containing asbestos transmission components
2530	Vehicular brake, steering, axle, wheel, and track components.	Items containing asbestos
2540	Vehicular furniture and accessories	Items containing asbestos
2640	Tire rebuilding and tire and tube repair materials	Items containing flammable or toxic compounds
Group 28	Engines, turbines, and components	Engine valves containing metallic sodium
Group 29	Engine accessories	Engine valves containing metallic sodium
Group 30	Mechanical power transmission equipment	Equipment containing hazardous hydraulic fluid including PCBs
Group 34	Metalworking machinery	Equipment containing hazardous hydraulic fluids including PCBs
3433	Gas welding, heat cutting, and metalizing equipment	Compressed gases
3439	Miscellaneous welding, soldering and brazing supplies and accessories.	Hazardous items such as cleaners, acids, flux and supplies that contain or produce hazardous fumes
3610	Printing, duplication, and bookbinding equipment	Flammable or toxic lithographic solutions
3655	Gas generating and dispensing systems, fixed or mobile	Items that produce hazardous fumes
3680	Foundry machinery, related equipment and supplies	Flammable or toxic casting compounds
4240	Safety and rescue equipment	Items which involve oxygen, or compressed gases, or contain emitting charges
5610	Mineral construction materials, bulk	Hazardous items such as cutback asphalt, deck and floor covering, deck and surface underlay compound, sealing compound, flight deck compound
5660	Wallboard, building paper, and thermal insulation materials	Asbestos cloth which has loose fibers or particles that may become airborne and materials containing formaldehyde
5820	Radio and television communication equipment, except airborne.	Circuit cooler items that contain gases that are regarded as hazardous to the earth's ozone layer
5835	Sound recording and reproducing equipment	Recording tape cleaners that contain hazardous cleaning fluids
5910	Capacitors	Items that contain polychlorinated biphenyls (PCBS) or sulfuric acid
5915	Filters and networks	Items that contain polychlorinated biphenyls (PCBs)

Federal Supply Class/Group	Title	Examples of Hazardous materials requiring identification
5920	Fuses and lighting arresters	Items containing radioactive material
5925	Circuit breakers	Items containing radioactive material
5930	Switches	Items containing radioactive material
5935	Connectors, electrical	Kits that contain flammable chemicals
5950	Coils and transformers	Items containing polychlorinated biphenyls (PCBs)
5960	Electron tubes and associated hardware	Tubes which contain radioactive isotopes and require warning labels and magnetron tubes which require special precautions when being prepared for air shipment
5965	Headsets, handsets, microphones, and speakers	Items containing magnetic material
5970	Electrical insulators and insulating materials	Items containing flammable solvents
5975	Electrical hardware and supplies	Items containing asbestos
5985	Antennas, waveguides, and related equipment	Kits that contain flammable chemicals
5999	Miscellaneous electrical and oxide electronic components	Contact plates that contain beryllium
Group 61	Electric wire and power and distribution equipment	Power factor capacitors containing PCBs
6120	Transformers: Distribution and power station	Transformers containing PCBs
6135	Batteries, primary	Lead-acid, lithium and mercury batteries and alkaline (with electrolyte)
6140	Batteries, secondary	Items that are wet or moist containing corrosive or other hazardous compounds
6145	Wire and cable, electrical	Insulated wire containing asbestos
6220	Electric vehicular lights and fixtures	Items that contain mercury
6230	Electric portable and hand lighting equipment	Items that contain wet batteries
6240	Electric lamps	Items that contain mercury
6260	Nonelectrical lighting fixtures	Items that contain mercury
6350	Miscellaneous signal and security detection systems	Items that contain wet batteries or radioactive material
6505	Drugs, biologicals and official reagents	Hazardous items as defined in Sec. 102–40.30
6508	Medicated cosmetics and toiletries	Hazardous items as defined in Sec. 102–40.30, subject to DOT Hazardous Materials Regulations
6510	Surgical dressing materials	Items containing flammable solvents
6520	Dental instruments, equipment, and supplies	Items containing flammable solvents, mercury, or asbestos
6525	X-ray equipment and supplies: medical, dental, veterinary	Items containing hazardous chemicals, solvents
6625	Electrical and electronic properties measuring and testing instruments.	Items containing radioactive materials
6640	Laboratory equipment and supplies	Items containing flammable compounds, mercury, or asbestos
6685	Pressure, temperature, and humidity and measuring and controlling instruments.	Items containing mercury or compressed gases
6740	Photographic	Items containing radioactive compounds
6750	Photographic supplies	Items containing hazardous chemicals, solvents, thinners, and cements
6780	Photographic sets, kits and outfits	Items containing hazardous chemicals, solvents, thinners, and cements
7360	Sets, kits, and outfits; food preparation and serving	Items containing compressed gasses such as fire extinguishers
7510	Office supplies	Hazardous items, such as thinners, cleaning fluids, flammable inks, and varnishes
8405	Outerwear, men's	Maintenance kits containing flammable solvents
8410	Outerwear, women's	Maintenance kits containing flammable solvents
8415	Clothing, special purpose	Maintenance kits containing flammable solvents
8465	Individual equipment	Maintenance kits containing flammable solvents
8510	Perfumes, toilet preparations, and powders	Shipping containers, and pressurized containers with flammable or nonflammable propellants
8520	Toilet soap, shaving preparations, and dentifrices	Shipping containers, and pressurized containers with flammable or nonflammable propellants
8720	Fertilizers	Items containing weed and pest control or other harmful ingredients or because of their composition, are hazardous
9390	Miscellaneous fabricated nonmetallic materials	Items containing flammable solvents or asbestos
9920	Smokers' articles and matches	Lighter fuel and matches only
9930	Memorials; cemeteries and mortuary equipment and supplies.	Items containing formaldehyde or its solutions

[FR Doc. E7–8670 Filed 5–4–07; 8:45 am]
BILLING CODE 6820–14–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 042307E]

Mid-Atlantic Fishery Management Council; Public Hearings; Correction

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

ACTION: Notice of public hearings; correction.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold hearings to allow for public input on Amendment 9 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery (FMP).

DATES: Written comments will be accepted until May 27, 2007. All meetings begin at 7 p.m.

ADDRESSES: Comments may be submitted through any of the following methods:

- Mail: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904.
- FAX: 302–674–5399.
- E-mail: *info@mafmc.org*. Please indicate the subject as SMB 9 Comments.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904, 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Need for Correction

On April 30, 2007, a document announcing public hearings on Amendment 9 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fishery (FMP) was published (FR Doc. E7–8197). That document incorrectly listed the meeting times for the hearings. This document corrects the meeting times see **DATES** section. All other information remains unchanged and will not be repeated in this correction.

Dated: May 1, 2007.

Tracey Thompson,

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

[FR Doc. E7–8575 Filed 5–4–07; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 87

Monday, May 7, 2007

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Thursday, May 10, 2007. The meeting will be held in Room MO9 of the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC at 1:30 p.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings have an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call to Order—1:30 p.m.

I. Chairman's Welcome
II. Adoption of ACHP Recommendations from the Preserve America Summit
III. Native American Activities
  A. Report of the Native American Advisory Group
  B. Native American Program Report
IV. Archaeology Task Force
  A. Presentation of Archaeology
  B. Report on Heritage Tourism Initiatives
V. Report of the Preservation Initiatives Committee
  A. Update on Preserve America Communities and Grants
  B. Preserve America Action Plan
  C. Preserve America and the National Park Service Centennial Challenge
VI. Report of the Federal Agency Programs Committee
  A. Guidance for Standard Treatments
  B. Tribal Notification Process for Regional and National Section 106 Initiatives
VII. Report of the Communications, Education, and Outreach Committee
  A. 2008 Preserve America Presidential Award Modification
VIII. Chairman's Report
  A. ACHP Alumni Foundation
  B. ACHP FY 2008 Budget
IX. Executive Director's Report
X. New Business
XI. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: May 1, 2007.

John Fowler,

Executive Director.

[FR Doc. 07–2221 Filed 5–4–07; 8:45 am]

BILLING CODE 4310–K6–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, May 23, 2007 (9 a.m. to 3 p.m.)

Location: National Press Club Ballroom, 529 14th Street, NW., Washington, DC 20045.

Please note that this is the anticipated agenda and is subject to change.

ACVFA Working Groups: The ACVFA has created three working groups to reflect the U.S. foreign assistance reforms framework: Economic growth, governing justly and democratically, and implementation mechanisms. The working groups will present papers with recommendations and lessons learned. Following this, respondents from the foreign assistance community will provide feedback. In addition, the general public will be given the opportunity to provide comments and pose questions. The working groups' final recommendations will be made available on the ACVFA Web site after the public meeting: *http://www.usaid.gov/about_usaid/acvfa.*

Africom: Rear Admiral Robert T. Moeller, Special Assistant to the Commander of U.S. CENTCOM has been invited to speak on the new U.S. Command for Africa (Africom). The presentation will include a discussion of the Command's mandate and its ongoing relationship with USAID and partners in the field. Michael Hess, USAID's Assistant Administrator for Democracy, Conflict and Humanitarian Assistance will join the Admiral for the discussion and questions.

Keynote: Acting Deputy Administrator James Kunder has been invited to address the ACVFA on USAID's mission in support of Transformational Diplomacy.

Appreciation: Benjamin Homan will be recognized for his service as Chairman of the ACVFA from August 2005 to December 2006.

The meeting is free and open to the public. Persons wishing to attend the meeting can register online at *http://www.usaid.gov/about_usaid/acvfa* or contact Ellen Blankenstein at *ellen@websterconsulting.com* or 202–237–0090 extension 19 or Jocelyn Rowe at *jrowe@usaid.gov* or 202–712–4002.

Dated: April 30, 2007.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. E7–8667 Filed 5–4–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Homeowner Response to Wildfire Hazard Mitigation Incentives: What Works and What Doesn't

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments

from all interested individuals and organizations on a new information collection, Homeowner Response to Wildfire Hazard Mitigation Incentives: What Works and What Doesn't.

DATES: Comments must be received in writing on or before July 6, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Lynne M. Westphal, PhD, Project Leader & Research Social Scientist Natural Environments for Urban Populations, Northern Research Station, USDA Forest Service, 1033 University Place, Ste 360, Evanston, IL 60201.

Comments also may be submitted via facsimile to 847–866–9506 or by e-mail to: *lwestphal@fs.fed.us.*

The public may inspect comments received at Northern Research Station, USDA Forest Service, 1033 University Place, Ste 360, Evanston, IL during normal business hours. Visitors are encouraged to call ahead to 847–866–9311 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Lynne M. Westphal, PhD, Project Leader & Research Social Scientist Natural Environments for Urban Populations, Northern Research Station, USDA Forest Service, 847–866–9311 extension 11. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Homeowner Response to Wildfire Hazard Mitigation Incentives: What Works and What Doesn't.

OMB Number: 0596–NEW.

Type of Request: New.

Abstract: The cost of protecting private property in areas near public forests, the wildland-urban interface (WUI), is growing rapidly. Rising costs are largely due to efforts of the Forest Service and other Federal agencies to protect private property, even when the fires pose little threat to public land. The Forest Service would like to find ways to help local communities share responsibility for community fire protection. Some local communities have programs designed to encourage homeowners to create fire-safe landscapes. In this way, these communities and homeowners help protect private property.

The Forest Service is requesting Office of Management and Budget (OMB) approval to study a range of current community programs designed to encourage homeowner participation in wildfire protection. Researchers will collect information from community residents living in high-risk wildfire areas in four communities: Grand Haven, Michigan; Ruidoso, New Mexico; Larimer County, Colorado; and Oakland, California. These sites were chosen based on differences in defensible space policy approaches and wildfire risk levels.

Two researchers (one from a university and one from the Forest Service Northern Research Station) will analyze the data collected. These researchers are experts in applied social psychology and survey research.

A random sample of homeowners who live in high-risk wildfire areas in the four communities will be mailed survey questionnaires. The homeowners will be told that the participation in the survey is voluntary.

Participating homeowners will first complete a questionnaire, sharing perceptions and beliefs about the local wildfire hazard and local government response. Specifically, homeowners will be asked about their knowledge and understanding of local wildfire programs, their own efforts to protect their homes from wildfires, and reasons why they do or do not comply with local wildfire guidelines and laws. In addition, homeowners will be asked for their opinions about the risk of wildfires and the effectiveness and fairness of local wildfire protection programs and programs used by other communities.

This information will assist the Forest Service in its efforts to implement the Healthy Forest Restoration Act by supporting development of Community Wildfire Protection Plans as required under this Act (Pub. L. 108–148). The Agency will use the collected information to help communities develop wildfire protection programs most appropriate for local conditions. Development of programs by local homeowners may increase local support, participation, and compliance with the programs. Local community and homeowner participation in wildfire protection activities are critical components of a comprehensive strategy to protect private property.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 2,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: May 1, 2007.

Ann M. Bartuska,

Deputy Chief, Research and Development.

[FR Doc. E7–8704 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for 7 CFR Part 4284, subpart G.

DATES: Comments on this notice must be received by July 6, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Cindy Mason, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 690–1433.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: October 31, 2007.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG)

program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the RBS to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from the grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to identify the applicant, describe the applicant's experience and expertise, describe the project and how the applicant will operate it, and other material necessary for prudent Agency decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 248.

Estimated Number of Responses per Respondent: 8.

Estimated Number of Responses: 1863.

Estimated Total Annual Burden on Respondents: 17,104.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250. 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: April 27, 2007.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–8636 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2007; Correction

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Business-Cooperative Service (RBS) published a document in the **Federal Register** of Friday, December 8, 2006, [71 FR 71128] concerning the announcement of the maximum dollar amount under the Rural Economic Development Loan and Grant Program (REDLG). This document announces the actual amount available and the expanded eligibility requirements.

FOR FURTHER INFORMATION CONTACT: Cindy Mason, Loan Specialist, USDA Rural Development, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 690–1433, FAX: (202) 720–2213.

Correction

In the **Federal Register** of December 8, 2006, in FR Doc. E6–20871, on page 71128, in the third column, correct the **SUPPLEMENTARY INFORMATION** caption to read: RBS published a Notice of Funds Availability (NOFA) on December 8, 2006. Based on the Revised Continuing Appropriations Resolution, 2007 (2007 Appropriation), (Public Law 110–5), the total amount available for zero-interest loans is $24,752,477. As stated in the NOFA, the maximum loan and grant awards pursuant to 7 CFR 1703.28 is 3.0 percent of the program level rounded to the nearest $10,000, but no less than $200,000. Thus, the maximum dollar amount available per loan is $740,000. Total amount available for grants is $10,000,000. Thus, the maximum amount available per grant is $300,000.

Additionally, the 2007 Appropriation continued the REDLG eligibility requirements implemented in FY 2006. Therefore, an organization is considered to be eligible to participate in the REDLG program if it can be described as:

1. Any former Rural Utilities Service borrower that has repaid or prepaid an insured, direct, or guaranteed loan under the Rural Electrification Act;

2. Any not-for-profit utility that is eligible to receive an insured or direct loan under such act; or

3. Any borrower under such act.

The Regulations for these programs are at 7 CFR part 1703, subpart B. The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated at 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2007 for zero-interest loans is $25,215,484.47, and the projected level for grants is $10,000,000. Applying the 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in a projected maximum loan award of $740,000. Applying the specified 3.0 percent to the program level for grants results in an amount higher than $200,000. Therefore, the projected grant award for FY 2007 is $300,000.

Dated: May 1, 2007.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–8682 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–XY–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: Office of the Secretary, Office of Civil Rights (OCR).

Title: Reasonable Accommodation for Employees and Applicants with Disabilities.

Form Number(s): CD–575.

OMB Approval Number: 0690–0022.

Type of Request: Regular submission.

Burden Hours: 17.

Number of Respondents: 100.

Average Hours per Response: 10 minutes.

Needs and Uses: Under the Rehabilitation Act of 1973, as amended, Federal agencies must provide reasonable accommodation (such as an interpreter, reader, assistive technology, etc.) to qualified applicants and employees with disabilities. The information collected will ensure that reasonable accommodation requests are processed in a fair, timely, and equitable manner.

Affected Public: Federal government, and individual or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7258 or via the Internet at *David_Rostker@omb.eop.gov*.

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8628 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–BP–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: National Institute of Standards and Technology (NIST).

Title: Evaluation of Whole-Body Detector Response of Virtual Gamma-Ray System—Administered Radioactive Material.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 5.

Number of Respondents: 50.

Average Hours Per Response: 6 minutes.

Needs and Uses: This collection of information is necessary to allow Investigators to make the appropriate corrections to relate the radioactivity measured to the content in the volunteer at the time of the measurement. The project will evaluate the system's response to a variety of body geometries, and relate the system's response to handheld *in vivo* gamma-ray detectors readings that would be used during radiological emergency response. Physical parameters of the volunteers such as height, weight will be needed to assess the correlation with counting response that is expected to have uncertainties as large as 50 percent. It is an objective of the project to provide guidance to the radiological consequence management community to better be able to estimate internal contamination of exposed people, and make decisions of their care.

Affected Public: Federal government, and individual or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

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 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8631 Filed 5–4–07; 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 of 1995, Public Law 104–13.

Bureau: International Trade Administration (ITA).

Title: International Buyer Program: Application and Exhibitor Data Form.

Agency Form Number: ITA–4014P and ITA–4102P.

OMB Number: 0625–0151.

Type of Request: Regular submission.

Burden Hours: 1,400.

Number of Respondents: 7,250.

Average Hours per Response: 3 hours and 10 minutes.

Needs and Uses: The International Trade Administration's International Buyer Program (IBP) encourages international buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The program has been successful, having substantially increased the number of foreign visitors attending these selected shows as compared to the attendance when not supported by the program. The number of shows selected to the program increased from 28 in FY 2001 to 32 in FY 2004 and will increase to 36 in 2007. Among the criteria used to select these shows are: Protection of intellectual property rights, export potential, international interest, scope of show, stature of show, exhibitor interest, overseas marketing, logistics, and cooperation of show organizers. Form ITA–4014P, Exhibitor Data, is used to determine which U.S. firms are interested in meeting with international business visitors and the overseas business interest of the exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in an IBP domestic trade show and is used to list the firm and its U.S.-made products in an Export Interest Directory, which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show. The Form ITA–4102P, Application, is used by a potential show organizer to provide (1) his/her experience, (2) ability to meet the special conditions of the IBP, and (3) information about the domestic trade show such as the number of U.S. exhibitors and the percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Departmental

Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to David Rostker, OMB Desk Officer, via the Internet *David_Rostker@omb.eop.gov* or Fax (202) 395–7285.

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8632 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Customer Satisfaction Research

ACTION: Proposed collection; comment request.

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

DATES: Written comments must be submitted on or before July 6, 2007.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne C. Dickinson, 301–763–4094, U.S. Census Bureau, HQ–8H187, Washington, DC 20233–0800 (or via the Internet at *joanne.dickinson@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting an extension of the generic clearance to conduct customer satisfaction research which may be in the form of mailed or electronic questionnaires and/or focus groups, telephone interviews, or personal interviews.

The Census Bureau has ranked a customer-focused environment as one of its most important strategic planning objectives. The Census Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers' needs and preferences. Several programs, products, and distribution channels have been designed/redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter specialists). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research concept design discussion to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: a block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to the Office of Management and Budget (OMB) about the specific activities on a flow basis throughout the year. OMB is notified of each activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of burden hours will increase to 7,500 due to the anticipation of additional activities due to the 2010 Census.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups, telephone interviews, or personal interviews.

III. Data

OMB Number: 0607–0760.

Form Number: Various.

Type of Review: Regular submission.

Affected Public: Individuals or households, State or local governments, farms, business or other for-profit organizations, federal agencies or employees, and not-for-profit institutions.

Estimated Number of Respondents: 90,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 12862.

IV. Request for Comments

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

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

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8627 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review (POR) October 4, 2004 through March 31, 2006. The

review covers two respondents, PSC VSMPO–AVISMA Corporation (formerly known as JSC AVISMA Titianium–Magnesium Works, *see* ''Successor–In-Interest'' section below) and its affiliated U.S. reseller VSMPO–Tirus, U.S. Inc. (collectively Avisma), and Solikamsk Magnesium Works (SMW).

The Department preliminarily determines that Avisma and SMW made sales to the United States at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of Avisma's and SMW's merchandise during the POR. The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

EFFECTIVE DATE: May 7, 2007.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the antidumping duty order on magnesium metal from the Russian Federation on April 15, 2005. *See Notice of Antidumping Duty Order: Magnesium Metal from the Russian Federation*, 70 FR 19930 (April 15, 2005) (Antidumping Duty Order). On April 3, 2006, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on magnesium metal from the Russian Federation. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 16549 (April 3, 2006). On April 4, 2006 and April 6, 2006, respectively, Avisma and SMW, Russian producers of the subject merchandise, requested that the Department conduct an administrative review. On April 28, 2006, U.S. Magnesium Corporation LLC, petitioner, also requested that the Department conduct an administrative review of Avisma and SMW. On May 31, 2006, the Department published the notice of initiation of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation, for the period October 4, 2004, through March 31, 2006.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 30864 (May 31, 2006).

On June 2, 2006, the Department issued sections A through E of the questionnaire to SMW.[2] SMW submitted its section A response on July 10, 2006, and submitted its sections B through D response on July 24, 2006. The Department issued a section A through D supplemental questionnaire on September 15, 2006, and SMW responded on October 19, 2006. On December 1, 2006, the Department issued a second section D supplemental questionnaire to SMW; SMW responded on December 29, 2006. Finally, on January 24, 2007, the Department issued a second section A through C supplemental questionnaire to SMW, and SMW responded on February 12, 2007.

On June 2, 2006, the Department issued sections A through D of the questionnaire to Avisma. Avisma submitted its section A questionnaire response on July 10, 2006, and submitted its responses to sections B through D on July 25, 2006. The Department issued a sections A through D supplemental questionnaire on September 15, 2006, and Avisma responded on October 18, 2006. On November 30, 2006, the Department issued a second section D supplemental questionnaire to Avisma; Avisma responded on December 29, 2006. On January 24, 2007, the Department issued a second sections A through C supplemental questionnaire to Avisma, and Avisma responded on February 14, 2007. Finally, on March 29, 2007, the Department issued a third section D supplemental questionnaire, and Avisma responded on April 12, 2007.

On December 13, 2006, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from December 31, 2006 to April 30, 2007. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Magnesium Metal From the Russian Federation*, 71 FR 74897 (December 13, 2006).

Period of Review

This review covers the period October 4, 2004 through March 31, 2006.

Scope of the Order

The merchandise covered by this order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium–based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as ''ultra–pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy''.

The scope of this order excludes: (1) magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non–magnesium granular materials to make magnesium–based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth

[1] The first administrative review covers approximately an 18-month period from the date of suspension of liquidation (generally the date the preliminary determination in the investigation was published) to the end of the month immediately preceding the anniversary month in which the review was requested. *See* 19 CFR 351.213(e)(1)(ii).

[2] Pursuant to section 733(d) of the Act and the expiration of so called ≥provisional measures,≥ the Department instructed CBP to discontinue the suspension of liquidation on all shipments entered, or withdrawn from warehouse for consumption on or after April 2, 2005, and to release any securities and refund any cash deposits on such entries. The Department instructed CBP to once again begin suspending liquidation and collecting securities or cash deposits effective April 15, 2005, the date the antidumping duty order on Russian magnesium metal was published in the Federal Register (70 FR 19930). Thus, there are no entries currently suspended or subject to assessment of antidumping duties during this 14-day period of the POR.

metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[3]

The merchandise subject to this order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive.

On November 9, 2006, in response to U.S. Magnesium's request for scope rulings, the Department issued final scope rulings in which we determined that the processing of pure magnesium ingots, imported from Russia by Timminco, a Canadian company, into pure magnesium extrusion billets constitutes substantial transformation. Therefore, such alloy magnesium extrusion billets produced and exported by Timminco are a product of Canada, and thus not included within the scope of the order. *See* November 9, 2006 Memorandum for Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Barbara E. Tillman, Director, Office 6, and Wendy Frankel, Director, Office 8, China/NME Group, AD/CVD Operations: *Pure Magnesium from the People's Republic of China (A–570–832), Magnesium Metal from the People's Republic of China (A–570–896), and Magnesium Metal from Russia (A–821–819): Final Ruling in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada.*

Succesor–In-Interest

On July 1, 2005, JSC Avisma Titanium–Magnesium Works (ATMW), a respondent in the investigation, merged with VSMPO, a controlling shareholder in ATMW since 1998, forming PSC VSMPO–AVISMA (referred to throughout this notice as ''Avisma''), the respondent in this review. Because entries have been made under the name of the new company during the POR, the Department must make a successorship determination in order to apply the appropriate and necessary company–specific cash deposit rates.

In determining whether Avisma is the successor to ATMW for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) *(Brass from Canada); Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 55 FR 28796 (July 13, 1990); and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada.* Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record, particularly Avisma's response to our questionnaire specifically addressing its claimed successorship (Appendix III of the October 19, 2006 supplemental questionnaire response), demonstrates that, with respect to the production and sale of the subject merchandise, Avisma is the successor to ATMW. Specifically, the evidence shows that Avisma uses the same magnesium production facilities (*id.* at 16), and the same customers and suppliers (except for VSMPO, which previously was both a customer and a supplier), as ATMW had (*id.* at 16–17). We reviewed Avisma's organizational structure before and after the merger and confirmed that there were only minimal changes. *See id.* at Exhibit SA–6. Therefore, we preliminary find that Avisma is the successor to ATMW for purposes of this proceeding, and for the application of the antidumping law.

Analysis

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product during the POR to the volume of U.S. sales of subject merchandise during the POR. *See* section 773(a)(1) of the Tariff Act of 1930, as amended (the Act). Based on this comparison, we determined for both Avisma and SMW that the quantity of sales in the home market exceeded five percent of their sales of magnesium to the United States. *See* 19 CFR 351.404(b).

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by respondents that are covered by the description in the ''Scope of the Order'' section, above, and that were sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 771(16)(B) and (C) of the Act, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics determined by the Department in the investigation to be the most appropriate for purposes of product matching.

Date of Sale

It is the Department's practice to use invoice date as the date of sale. However, 19 CFR 351.401(i) states that the Secretary may use a date other than the invoice date if the Secretary is satisfied that the material terms of the sale were established on some other date. *See Allied Tube and Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 217–219 (CIT 2000).

Both Avisma and SMW reported invoice date as the date of sale for all sales in both markets, consistent with our conclusions in the investigation regarding both spot sales and sales made according to short- and long–term agreements. *See Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying *Issues and Decision Memorandum* at *Comment 14.* After analyzing the responses of both parties and the sample sales documents provided, we preliminarily determine that invoice date is the appropriate date of sale for all sales under review.

[3] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from China, Israel, and Russia. *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not chemically combined in liquid form and cast into the same ingot.

Export Price and Constructed Export Price

In its questionnaire responses, Avisma identified all of its sales to the United States as constructed export price (CEP) sales, except one, which it identified as an export price (EP) sale. With the exception of that one EP sale, all of Avisma's sales are properly classified as CEP sales because they were made for the account of Avisma, by Avisma's U.S. affiliate, VSMPO–Tirus, U.S., Inc. (Tirus US), to unaffiliated purchasers in the United States. U.S. sales to the first unaffiliated party were made in the United States, by the U.S. affiliate, thus satisfying the Department's requirements for treating sales as CEP sales. *See* section 772(b) of the Act. Avisma and Tirus US are affiliated through common control. *See* section 771(33)(F) of the Act.

In accordance with section 772(c)(2) of the Act, for Avisma's CEP sales and the single EP sale we made deductions from price for movement expenses and discounts, where appropriate. More specifically, after reviewing the terms of delivery for Avisma's sales to the United States, we deducted early payment discounts, Russian inland freight from plant to port, freight insurance, Russian brokerage, handling, and port charges, international freight and marine insurance, U.S. customs duties, U.S. brokerage, handling, and port charges, and U.S. warehousing and inland freight.

Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, we deducted direct selling expenses and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. *See Analysis Memorandum for Magnesium Metal from the Russian Federation: PSC VSMPO–AVISMA Corporation* (April 30, 2007) (*Avisma Analysis Memorandum*).

SMW identified all of its U.S. sales as CEP sales in its questionnaire responses. During the POR, all sales of SMW's subject merchandise to the United States were made through its U.S. affiliates, Solimin and Cometals. As in the investigation, we find that Cometals is affiliated with SMW by virtue of an agency agreement, in which Cometals acts as a North American distributor of pure and alloy magnesium products. *See* section 771(33)(G) of the Act; *see also Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo–Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24403 (May 5, 1997). We also find that Solimin is affiliated with SMW under section 771(33)(F) of the Act because it is wholly owned and controlled by SMW. All of SMW's sales are properly classified as CEP sales because they were made for the account of SMW, by SMW's U.S. affiliates, Solimin and Cometals, to unaffiliated purchasers in the United States. U.S. sales to the first unaffiliated party were made in the United States, by the U.S. affiliates, thus satisfying the Department's requirements for characterizing sales as CEP sales, pursuant to section 772(b) of the Act.

In accordance with section 772(c)(2) of the Act, for SMW's CEP sales, we made deductions from U.S. price for movement expenses and billing adjustments, where appropriate. More specifically, after reviewing the terms of delivery for SMW's CEP sales to the United States, we deducted Russian inland freight from plant to port, Russian brokerage, handling, and port charges, international freight and insurance, U.S. brokerage, handling, and port charges, U.S. warehousing, U.S. customs duties, and U.S. inland freight.

In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. *See Analysis Memorandum for Magnesium Metal from the Russian Federation: Solikamsk Magnesium Works* (April 30, 2007) (*SMW Analysis Memorandum*).

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP or CEP sale. *See* ''Level of Trade'' section below.

Where appropriate, we determined NV for Avisma and SMW based on home market prices. We did not deduct home market movement expenses, pursuant to section 773(a)(6)(A) of the Act, as both respondents billed their customers separately for these expenses. For SMW, we deducted billing adjustments. As in the U.S. market, Avisma did not have billing adjustments, and neither company had discounts or rebates in the home market. For home market sales compared to Avisma's EP sale, we made circumstances of sale (COS) adjustments for Avisma's transactions reflecting differences between direct selling expenses (credit expense) incurred on domestic (home market) and U.S. sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For home market sales compared to CEP sales, we only deducted domestic direct selling expenses from home market price, as U.S. direct selling expenses were deducted from U.S. price, as noted above. We also made adjustments for any differences in packing between domestic and U.S. sales, pursuant to section 773(a)(6)(B)(ii) of the Act, and any differences between the variable costs of the U.S. product and the matching home market product (the ''DIFMER'' adjustment), pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison–market sales, NV may be based on constructed value (CV). Accordingly, for sales of magnesium for which we could not determine the NV based on comparison–market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the sales–below-cost test, we based NV on CV. *See* ''Cost of Production Analysis'' section below.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative expenses (SG&A), interest expense, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section below. We based SG&A, interest expense, and profit on the actual amounts incurred and realized by Avisma and SMW in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

For Avisma's EP sale, we made adjustments to CV for differences in COS in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act and 19 CFR 351.410. For CV compared to CEP sales, we only deducted domestic direct selling expenses from home market price, as U.S. direct selling expenses were deducted from U.S. price, as noted above.

Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market SG&A expenses, interest expense, and packing expenses. We relied on the COP data submitted by Avisma and SMW in their cost questionnaire responses, with the following changes.

We relied upon Avisma's December 29, 2006 cost database, which incorporated the company's revised depreciation expense based on the revaluation of its fixed assets. We revised the reported general and administrative (G&A) and financial expense ratios to reflect the company's fiscal year, rather than the 18 months of the POR. Additionally, we included certain auxiliary services in the G&A expense ratio. *See* Memorandum to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, from Heidi Schriefer, Senior Accountant, *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results for Magnesium Metal from the Russian Federation - PSC VSMPO–AVISMA Corporation*, dated concurrently with this notice. For SMW, we did not make any adjustments to the cost of production.

Affiliated Party Transactions and Arm's–Length Test

We used sales to affiliated customers in the home market only where we determined such sales were made at arm's–length prices (*i.e.*, at prices comparable to the prices at which the respondent sold identical merchandise to unaffiliated customers). *See* 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's–length prices, the Department compares the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and rebates, and packing. See id. In accordance with the Department's practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's–length prices. *See* 19 CFR 351.403(c); *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). Where the affiliated party transactions do not pass the arm's–length test, all sales to that affiliated party are excluded from the NV calculation. When the aggregate volume of the sales to these affiliates that do not pass the arm's–length test is more than 5 percent of total home market sales, we request downstream sales. *See* 19 CFR 351.403(d). As such, SMW provided downstream sales information for sales to its affiliate, Solikamsk Desulphurizer Works (SZD). For Avisma, all of its sales to affiliates that failed the arm's length test were consumed by the affiliates and incorporated into merchandise that is outside of the scope of the order. Thus, there were no downstream sales to report.

Level Of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP sale. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*South African Plate Final*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution),[4] including selling functions,[5] class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third–country prices), we consider the starting prices before any adjustments. With respect to CEP sales, *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001), requires the Department to remove the selling activities set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. As such, for CEP sales, the U.S. LOT is based on the starting price of the sales, as adjusted under section 772(d) of the Act.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. However, in this case, the Department preliminarily determines that only one LOT existed in both markets for each respondent, consistent with what the parties reported and with our determination in the investigation. (SMW reported two LOTs in the home market, but one LOT consisted exclusively of sales to an affiliate. These sales were disregarded after failing the arm's length test. The Department determines that the downstream sales reported by SMW are at the same level of trade as the rest of the home market because the functions being performed by the affiliate, SZD, are essentially the same as those performed by SMW.) For further details on the LOT analysis, *see Avisma Analysis Memorandum* and *SMW Analysis Memorandum*.

Currency Conversion

For purposes of the preliminary results, in accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted–average dumping margins exist:

Manufacturer/Exporter	Margin
PSC VSMPO–AVISMA Corporation	2.34 %
Solikamsk Magnesium Works	3.77 %

Cash Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: 1) the cash deposit rate for Avisma will be that established in the final results of this review; 2) the cash deposit rate for SMW will be that established in the final results of this review; 3) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 4) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is a firm covered in this

review, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and 5) if neither the exporter nor the manufacturer is a firm covered in this or any previous proceeding conducted by the Department, the cash deposit rate will continue to be the ''all others'' rate established in the LTFV investigation, which is 21.01 percent. *See Antidumping Duty Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Duty Assessment

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific *ad valorem* assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in the final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issues; 2) a brief summary of the argument; and 3) a table of authorities. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case brief, rebuttal brief, or hearing no later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: April 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8688 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other than Drill Pipe, from Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 7, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Dara Iserson, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0780 or (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2006, the Department of Commerce (the Department) received timely requests for an administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (OCTG) from Korea, with respect to SeAH Steel Corporation, Husteel Co., Ltd, and Nexteel Co., Ltd. On September 29, 2006, the Department published a notice of initiation of this administrative review for the period of August 1, 2005 through July 31, 2006. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, 71 FR 57465 (September 29, 2006).

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results by the current deadline of May 3, 2007 because this is Nexteel Co., Ltd.'s first appearance under this antidumping duty order and additional time is needed to analyze this company's information. We have also requested additional information from the respondents and we will need more

time to analyze the responses and issue any supplemental questionnaires, if necessary. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until no later than August 31, 2007, which is 365 days after the last day of the anniversary month of the date of publication of the order. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 351.213(h) of the Department's regulations.

This notice is issued and published in accordance to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 30, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–8690 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; South Pacific Tuna Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 6, 2007.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Raymond P. Clarke, National Marine Fisheries Service, 808–944–2205 or *raymond.clarke@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States, signed in Port Moresby, Papua New Guinea, in 1987, and its annexes, schedules and implementing agreements, as amended (Treaty), authorize U.S. tuna vessels to fish within fishing zones of a large region of the Pacific Ocean. The South Pacific Tuna Act (16 U.S.C. 973g and 973f) and U.S. implementing regulations (50 CFR 282.3 and 282.5) authorize the collection of information from participants in the Treaty fishery. Vessel operators who wish to participate in the Treaty fishery must submit annual license and registration applications and periodic written reports of catch and unloading of fish from a licensed vessel. The information collected is submitted to the Forum Fisheries Agency (FFA) through the U.S. government (National Marine Fisheries Service). The license and registration application information is used by FFA to determine the operational capability and financial responsibility of a vessel operator interested in participating in the Treaty fishery. Information obtained from vessel catch and unloading reports is used by FFA to assess fishing effort and fishery resources in the region and to track the amount of fish caught within each Pacific island state's exclusive economic zone for fair disbursement of Treaty monies. If the information is not collected, the U.S. government will not meet its obligations under the Treaty, and the lack of fishing information will result in poor management of the fishery resources.

II. Method of Collection

All forms are to be submitted in hard copy, via mail.

III. Data

OMB Number: 0648–0218.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time per Response: License application, 15 minutes; 45 minutes for a registration application, 45 minutes; catch report, 1 hour; and unloading log sheet, 30 minutes.

Estimated Total Annual Burden Hours: 242.

Estimated Total Annual Cost to Public: $36,000.

IV. Request for Comments

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

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

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8633 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Statement of Financial Interests, Regional Fishery Management Councils

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 6, 2007.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William Chappell, (301) 713–2337 or *william.chappell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Act) authorizes the establishment of Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such fishery management plans under circumstances, (a) which will enable the States, the fishing industry, consumers, environmental organizations, and other interested persons to participate in the development of such plans, and (b) which take into account the social and economic needs of fishermen and dependent communities.

Section 302(j) of the Act requires that Council members appointed by the Secretary, Scientific and Statistical Committee (SSC) members appointed by a Council under Section 302(g)(1), or individuals nominated by the Governor of a State for possible appointment as a Council member disclose their financial interest in any Council fishery. These interests include harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity. In 2008, the Secretary is required to submit an annual report to Congress for 2007 on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements, including identification of any conflict of interest problems with respect to the Councils and SSCs and recommendations for addressing any such problems.

Seated Council members appointed by the Secretary, including the Tribal Government appointee and SSC members, must file a financial interest form within 45 days of taking office and must provide an update of their statements at any time any such financial interest is acquired, or substantially changed.

The Act further provides that a member shall not vote on a Council decision that would have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interest of other participants in the same gear type or sector of the fishery. However, an affected individual who is declared ineligible to vote on a Council action may participate in Council deliberations relating to the decision after notifying the Council of his/her recusal and identifying the financial interest that would be affected.

II. Method of Collection

Respondents submit paper forms.

III. Data

OMB Number: 0648–0192.

Form Number: NOAA Form 88–195.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 306.

Estimated Time Per Response: 35 minutes.

Estimated Total Annual Burden Hours: 179.

Estimated Total Annual Cost to Public: $54.

IV. Request for Comments

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

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

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8634 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043007A]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Prospectus 4.2

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the draft Prospectus for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products for public comments. This draft Prospectus addresses the following CCSP Topic:

Product 4.2: Thresholds of Change in Ecosystems.

After consideration of comments received on the draft Prospectus, the final Prospectus along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by June 6, 2007.

ADDRESSES: The draft Prospectus is posted on the CCSP Program Office web site. The web address to access the draft Prospectus is:

Product 4.2

http://www.climatescience.gov/Library/sap/sap4–2/default.php

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202)419–3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: May 1, 2007.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. 07–2244 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030107C]

Atlantic Highly Migratory Species; Exempted Fishing Permits; Request for Public Comments

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

ACTION: Notice; request for an exempted fishing permit; request for public comment.

SUMMARY: This notice re-opens the comment period on an March 13, 2007, **Federal Register** notice that was extended on April 11, 2007, regarding a request for an exempted fishing permit (EFP) to collect fisheries data in the East Florida Coast and Charleston Bump closed areas. The extended comment period closed on April 25, 2007. NMFS is reopening the comment period due to requests from the South Atlantic Fishery Management Council (SAFMC) and others. The SAFMC has requested re-opening the comment period to include their next meeting on June 11–15, 2007. The Agency is re-opening the comment period to allow for additional comments to be received from the SAFMC and the public prior to making a determination on the application.

DATES: The deadline for written comments on the April 11, 2007 (72 FR 18208), notice has been re-opened until 5 p.m. on June 20, 2007.

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

• Email: *SF1.030107C@noaa.gov*. Include in the subject line the following identifier: ''I.D. 030107C''.

• Mail: Michael Clark, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on EFP Application.''

• Fax: (301)713–1917

FOR FURTHER INFORMATION CONTACT: Michael Clark, by phone: (301) 713–2347; fax: (301)713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (1601 U.S.C. 1801 *et seq.*), which regulate fishing activities of tunas, swordfish, sharks, and billfish. Regulations at 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic Highly Migratory Species (HMS).

On March 13, 2007 (72 FR 11327), NMFS published a notice announcing receipt of an application to conduct fishing activities from Pelagic Longline (PLL) vessels in portions of the East Florida Coast and Charleston Bump closed areas. The comment period was extended on April 11, 2007 (72 FR 18208). The objectives of this EFP request have not changed. The applicant states that these data would provide information on circle hook performance, target and bycatch species composition, and allow comparative analysis with historical pelagic longline logbook and observer program data. The applicant states that the goals of these fishing activities are to determine if implementation of new pelagic longline fishing practices justify the resumption of PLL fishing in the selected areas and to catch more of the United States swordfish quota. The proposed activities would occur in Federal waters of the Atlantic Ocean off Florida and South Carolina from the date of issuance through April 2008.

NMFS is re-opening the comment period until June 20, 2007, because of requests made by the South Atlantic Fishery Management and others. This will afford the Council an opportunity to consider the EFP request during their June 2007 meeting and will also provide additional time for the public to consider the application prior to the Agency making a determination.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: May 1, 2007.

James P. Burgess,

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

[FR Doc. E7–8700 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107A]

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California.

DATES: This authorization is effective from May 2, 2007 until May 1, 2008.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713–2289, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to

incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 16, 2006, CALTRANS sumbitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB or the Bay), California. An IHA was issued to CALTRANS for this activity on April 30, 2006 and it will expire on April 29, 2007 (71 FR 26750, May 8, 2006). Background information on the issuance of this IHA was published in the **Federal Register** on January 5, 2007 (72 FR 532). A detailed description of the SF-OBB project was provided in the November 14, 2003 (68 FR 64595) **Federal Register** notice and is not repeated here.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on January 5, 2007 (72 FR 532). During the 30–day public comment period, the Marine Mammal Commission (Commission) provided the only comment.

Comment: The Commission states that it recommends that NMFS grant the applicant's request, provided that the monitoring and mitigation activities described in the NMFS' previous **Federal Register** notices are carried out as described.

Response: NMFS agrees with the Commission's recommendation, and all monitoring and mitigation measured described in the previous **Federal Register** notices (71 FR 26750, May 8, 2006; 72 FR 532, January 5, 2007) are required in the current IHA.

Description of the Marine Mammals Potentially Affected by the Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf*. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF-OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Based on airborne noise levels measured and on-site monitoring conducted during 2004 under the previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to below harassment levels by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site.

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' June 2004, January 2005 annual monitoring reports, and marine mammal observation memoranda between February and September, 2006, the East Span Project resulted in only small numbers of harbor seals. Therefore, it is not expected that these activities will result in more than a negligible impact on marine mammal stocks and will not have a significant impact on their habitat. No pile driving has been commenced since September 15, 2006. Short-term impacts to habitat may include minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Mitigation

The following mitigation measures are required under the IHA to reduce impacts to marine mammals to the lowest extent practicable.

Barrier Systems

An air bubble curtain system is required to be used only when driving the permanent open-water piles. While the bubble curtain is required specifically as a method to reduce impacts to endangered and threatened fish species in SFB, it may also provide some benefit for marine mammals. The NMFS' Biological Opinion and the California Department of Fish and Game's (CDFG) 2001 Incidental Take Permit also allow for the use of other equally effective methods, such as cofferdams, as an alternative to the air bubble curtain system to attenuate the effects of sound pressure waves on fish during driving of permanent in-Bay piles (NMFS 2001; CDFG, 2001). Piers E–16 through E–7 for both the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams, which will be de-watered before the start of pile driving. De-watered cofferdams are generally effective sound attenuation devices. For Piers E3 through E6 of the Skyway and Pier 1 the Self-Anchored Suspension span, it is anticipated that cofferdams will not be used; therefore, a bubble curtain will surround the piles.

Sound Attenuation

As a result of the determinations made during the Pile Installation Demonstration Project (PIDP) restrike and the investigation at the Benicia-Martinez Bridge, NMFS determined in 2003 that CALTRANS must install an air bubble curtain for pile driving for the open-water piles without cofferdams

located at the SF-OBB. This specification and configuration of the air bubble curtain system is described in pervious **Federal Register** notice (71 FR 4352, January 26, 2006), and is not repeated here.

Establishment of Safety/Buffer Zones

A safety zone is to be established and monitored and will include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 microPa rms (impulse) for pinnipeds. Also, a 180–dB re 1 microPa rms (impulse) safety zone for gray whales and harbor porpoises must be established for pile driving occurring during the gray whale migration season from December through May. Prior to commencement of any pile driving, a preliminary 500–m (1,640–ft) radius safety zone for pinnipeds (California sea lions and Pacific harbor seals) will be established around the pile driving site, as it was for the PIDP. Once pile driving begins, either new safety zones can be established for the 500 kJ and 1,700 kJ hammers or the 500 m (1,640 ft) safety zone can be retained. If new safety zones are established based on SPL measurements, NMFS requires that each new safety zone be based on the most conservative measurement (i.e., the largest safety zone configuration). SPLs will be recorded at the 500–m (1,640–ft) contour. The safety zone radius for pinnipeds will then be enlarged or reduced, depending on the actual recorded SPLs.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15–minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain and marine mammal observers monitoring a 190–dB safety zone for pinipeds and 180–dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS will also ''soft start'' the hammer prior to operating at full capacity. CALTRANS typically implements a ''soft start'' with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor will initiate hammering of both the 500–kJ and the 1,700–kJ hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area, this should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment will comply with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

Monitoring

The following monitoring measures are required under the IHA to reduce impacts to marine mammals to the lowest extent practicable.

Visual Observations

The area-wide baseline monitoring and the aerial photo survey to estimate the fraction of pinnipeds that might be missed by visual monitoring have been completed under the current IHA and do not need to be continued.

Safety zone monitoring will be conducted during driving of all open-water, permanent piles without cofferdams and with cofferdams when underwater SPLs reach 190 dB RMS or greater. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team will be required for the safety zones around each pile driving site, so that multiple teams will be used if pile driving is occurring at multiple locations at the same time. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Observers will most likely conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) is not practical. Pile driving will not begin until the safety zone is clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation). Monitoring will continue through the pile driving period and will end approximately 30 minutes after pile driving has been completed. Biological observations will

be made using binoculars during daylight hours. Infrared (IR) scopes will be made using binoculars during low light condition for marine mammal monitoring.

In addition to monitoring from boats during open-water pile driving, monitoring at one control site (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e. Mowry Slough) will be designated and monitored for comparison. Monitoring will be conducted twice a week at the control site whenever open-water pile driving is being conducted. Data on all observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seal re-haul after a flush.

Acoustical Observations

Airborne noise level measurements have been completed and underwater environmental noise levels will continue to be measured as part of the East Span Project. The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for cetaceans. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given open-water pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions either west, east, south or north of the pile driving site will be conducted at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa rms (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Reporting

Under previous IHAs, CALTRANS submitted weekly marine mammal monitoring reports when pile driving is commenced. In August 2006, CALTRANS submitted its Hydroacoustic Measurement at Piers T1 and E2 report. This report is available by contacting NMFS (see **ADDRESSES**) or on the Web at *http://biomitigation.org*.

Under the 2007 IHA, coordination with NMFS will occur on a weekly basis, or more often as necessary. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at *http://biomitigation.org*. These weekly reports will include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS will provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft final report will be considered to be the final report.

National Environmental Policy Act (NEPA)

In November, 2003, NMFS prepared an Environmental Assessment (EA) and made a Finding of No Significant Impact (FONSI) on this action. Notice of public availability of the EA/FONSI was published on November 14, 2003 (68 FR 64595) and on October 20, 2004 (69 FR 61652). NMFS has reviewed the November 4, 2003 EA/FONSI in response to the request for renewal of this IHA and has determined that the findings and determinations made in the EA/FONSI continue to accurately address the impacts on the human environment through the taking of marine mammals by the CALTRANS project. Therefore, preparation of an environmental impact statement on this action is not required.

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. A conservation recommendation contained in the Biological Opinion was the use of an air bubble curtain to reduce impacts to salmonids.

Listed marine mammals are not expected to be in the area of the action and thus would not be affected. The issuance of this IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. However, as the effects of the underlying activities on listed salmonids were analyzed during a formal consultation between the FHWA and NMFS and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA for this activity does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

Determinations

For the reasons discussed in this document and in previously identified supporting documents, NMFS has determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoises, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Authorization

NMFS has issued an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 1, 2007.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–8698 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Low-Power Television and Translator Digital-to-Analog Conversion Program Application Form

ACTION: Notice.

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

DATES: Written comments must be submitted on or before July 6, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, National Telecommunications and Information Administration (NTIA), Room 4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Low-Power Television and Translator Digital-to-Analog Conversion Program is to assist each eligible low-power television station to receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables it to convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel.

''The term 'low-power television station' means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not purchased a digital-to-analog conversion device prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005'' (See Section 3008 of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4, 25 (2006)).

This information collection requests information necessary to determine the identity and the number of potentially eligible and priority applicant stations, and the type of equipment required. The information collection also requests optional information about the number of potentially eligible and priority applicant stations, and the type of equipment required which NTIA will use to design the Low-Power Television and Translator Upgrade Program, which is a follow-on program to the Low-Power Television and Translator Digital-to-Analog Conversion Program and is directed at the same applicant pool.

II. Method of Collection

The method of collection will be electronic by the Internet.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, state or local government agencies, individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

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

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

Dated: May 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–8629 Filed 5–4–07; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense.

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: Defense Health Board (DHB).

DATES: May 23, 2007.

TIMES: 9 a.m.–12 p.m. (Open Session). 2 p.m.–4 p.m. (Open Session).

PLACE OF MEETING: Shenandoah Room, Holiday Inn National Airport/Crystal City, 2650 Jefferson Davis Highway, Arlington, Virginia 22202.

PURPOSE OF THE MEETING: The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

AGENDA: The Board will deliberate the draft interim findings and recommendations of the Task Force on the Future of Military Health Care. Established by Congress and operating as a Defense Health Board subcommittee, the Task Force on the Future of Military Health Care is charged to assess and make recommendations for sustaining military health care services provided to members of the Armed Forces, retirees, and their families. The Defense Health Board will also receive updates from Department's Global Emerging Infections Surveillance and Reporting System and the status of DoD traumatic brain injury diagnostic, treatment, and preventive initiatives.

The Board will conduct an administrative session on the afternoon of May 3, 2007, in the same location following the open session. The administrative session is closed to the public.

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 Defense Health Board meeting from 9 a.m. to 4 p.m. on May 3, 2007 is open to the public. Any member of the public wishing to provide input to the Defense Health Board 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 submitting a written statement may submit their statement to the Designated Federal Officer at the address detailed below at any point. 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 Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson 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 Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

FOR FURTHER INFORMATION CONTACT: Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Room 810, Falls Church, Virginia 22041–3206, (703) 681–3279, Ext 123, Fax: (703) 681–3321, (*roger.gibson@ha.osd.mil*). Additional information and meeting registration is available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*. The public is encouraged to register for the meeting. Written statements may be mailed to the above address, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3321.

Dated: May 2, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–2258 Filed 5–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 1, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Revision.

Title: Longitudinal Analysis of Comprehensive School Reform Implementation and Outcomes (LACIO).

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 16,565.

Burden Hours: 11,997.

Abstract: This evaluation assesses the accomplishments of the Comprehensive School Reform (CSR) program in implementing school reform and thereby improving student achievement. The evaluation also makes a preliminary assessment of the conditions influencing the sustainability of reforms once federal CSR funding ends. The evaluation uses a variety of data sources to understand the complex interplay of state policies, school districts, educational support, and CSR school conditions affecting CSR implementation and outcomes. The major evaluation questions are: (1) To what extent have CSR-supported schools made gains on state assessments in comparison to gains for schools in the same state with similar characteristics; (2) How effective is CSR support for reform; (3) How have district policies and state policies affected CSR implementation and comprehensive school reform; (4) What implications can be drawn from CSR implementation and outcomes for reform in Title I schoolwides; and (5) How effective are various school reform activities in secondary schools, and to what extent can school progress be linked to comprehensive school reform. A mixed method approach will be used to collect appropriate data for addressing each evaluation question. The methods include mail surveys of 500 CSR program and non-CSR program schools, online surveys of 50 states and 65 school districts, and case studies of 40 ''sites'' to produce an understanding of the dynamic of the actual relationships among school, district, and state actions, policies, and practices (each ''site'' consists of a CSR school and matched comparison school as well as the district, state, and support infrastructure in which the schools operate). Evaluators will be able to link information from these various sources in order to provide policymakers and other stakeholders with coherent findings.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3327. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–8650 Filed 5–4–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 6, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 1, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 5,600.

Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities and to determine the dollar share of the Congressional appropriation to be awarded to successful applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3178. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–8651 Filed 5–4–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 1, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.
Title: Evaluation of the Quality Teaching for English Learners (QTEL) Program.
Frequency: Annually.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:

Responses: 907.
Burden Hours: 489.

Abstract: This evaluation of WestEd's Quality Teaching for English Learners (QTEL) professional development program is a cluster random assignment evaluation. This study is part of the U.S. Department of Education's Regional Educational Laboratory Program. The QTEL program equips secondary teachers to provide challenging tasks and scaffold student learning to advance development of academic language. This study will be conducted in school districts in San Diego County. It will include at least 50 middle schools that have large numbers of English Language Learners (ELL). The study will use a three-year longitudinal design to track program effects on teacher knowledge, teacher practice, and student English reading and writing skills.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3328. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–8652 Filed 5–4–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including

through the use of information technology.

Dated: May 1, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Improving Adolescent Literacy across the Curriculum in High Schools: An Evaluation of the Strategic Instruction Model's Content Literacy Continuum.

Frequency: Semi-Annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 63.
Burden Hours: 95.

Abstract: The Department of Education's Institute for Education Sciences has commissioned this evaluation as a response to the current need for experimental research about the impacts of adolescent literacy programs on reading and academic outcomes of struggling readers. This study focuses on literacy across the curriculum intervention that emphasizes literacy instruction throughout a high school student's day. High school students from diverse types of school districts across at least two of the states in the Midwest region will be tested in literacy and other student achievement data will be collected from school records. Classroom instruction will be observed throughout the course of the intervention. District and building administrators will be interviewed about the intervention and the need for large-scale district and school reform in literacy instruction.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3326. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–8653 Filed 5–4–07; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Thursday, May 17, 2007, 10 a.m.–1 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: The Commission will receive updates on the activities of the following: The EAC Standards Board; the EAC Board of Advisors; and the EAC Technical Guidelines Development Committee (TGDC). The Commission will consider other administrative matters.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–2280 Filed 5–3–07; 3:40 pm]

BILLING CODE 6820–KF–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8308–9]

Great Lakes Initiative (GLI) Toxicity Data Clearinghouse

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Great Lakes Initiative Toxicity Data Clearinghouse (Clearinghouse) is available for use by States, Tribes, and other interested parties. The online Clearinghouse, developed in cooperation with the United States Environmental Protection Agency (USEPA) Headquarters, Regions 2, 3, and 5, and the Great Lakes States and Tribes, acts as a central location for toxicity data, exposure parameters, and supporting documents used in deriving water quality criteria and guidance values in the Great Lakes Basin.

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Water Quality Branch (WQ–16J), U.S. EPA, Region 5, Water Division, 77 West Jackson Blvd., Chicago, IL 60604, (312) 353–6066, *thompson.brian@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

The Clearinghouse was developed to support implementation of the Final Water Quality Guidance for the Great Lakes System (GLI). Data from the Clearinghouse can be shared among States and Tribes to assist them in developing or updating numeric water quality standards and guidance values for the protection of aquatic life, human health, and wildlife. In particular, States and Tribes can use the information in the Clearinghouse to help derive criteria for pollutants without specific numeric criteria published in the GLI (40 CFR Part 132).

Data in the Clearinghouse can be viewed online or downloaded in spreadsheet format. The Clearinghouse includes PDF versions of ''fact sheets,'' which provide methodology information on how State agencies and USEPA derive criteria and guidance values. The Clearinghouse also includes links to GLI-related documents, including Federal Register notices and technical support documents, as well as formulas that allow users to calculate criteria according to GLI methodologies. To access the Clearinghouse go to *http://www.epa.gov/gliclearinghouse.*

Dated: April 24, 2007.

Walter W. Kovalick, Jr.,

Acting Deputy Regional Administrator, Region 5.

[FR Doc. E7–8655 Filed 5–4–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Wednesday, May 30, 2007 from 9 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: In addition to a presentation from the Manufacturing Team of the 2007 Advisory Committee, the Committee will also focus on the Congressionally mandated Competitiveness Report, which focuses on how Ex-Im Bank's programs compare with their major G–7 ECA counterparts during 2006.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Teri Stumpf to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 22, 2007, Teri Stumpf, Room 1209, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1209, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Howard A. Schweitzer,

General Counsel.

[FR Doc. 07–2235 Filed 5–4–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, May 8, 2007, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), and (9)(A)(ii), Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: May 1, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–8643 Filed 5–4–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, May 8, 2007, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA:

Memorandum and resolution re: Final Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category 1.

Memorandum re: Outlook for the Deposit Insurance Fund.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Federal Deposit Insurance Corporation.

Dated: May 1, 2007.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–8644 Filed 5–4–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Chain Bridge Bancorp, McLean, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Chain Bridge Bank, National Association, McLean, Virginia (in organization).

Board of Governors of the Federal Reserve System, May 2, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–8647 Filed 5–4–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for One National Family Planning Training Center Cooperative Agreement

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

Announcement Type: Initial Competitive Cooperative Agreement.

CFDA Number: 93.260.

DATES: To receive consideration, applications must be received by the Office of Grants Management, Office of Public Health and Science (OPHS), Department of Health and Human Services (DHHS) no later than 5 p.m. Eastern Time on July 6, 2007. The application due date requirement in this announcement supersedes the instructions in the OPHS–1 form. Applications that do not meet the deadline will be returned to the applicant unread. See heading ''IV. APPLICATION and SUBMISSION INFORMATION'' for information on application submission mechanisms.

Executive Order 12372 comment due date: The State Single Point of Contact (SPOC) has 60 days from the application due date to submit any comments.

ADDRESSES: Application kits may be obtained electronically by accessing Grants.gov at *http://www.grants.gov* or GrantSolutions at *http://www.GrantSolutions.gov*. To obtain a hard copy of the application kit, contact WilDon Solutions at 1–888–203–6161. Applicants may fax a written request to WilDon Solutions at (703) 351–1138 or e-mail the request to *OPHSgrantinfo@teamwildon.com*. Applications must be prepared using Form OPHS–1 ''Grant Application,'' which is included in the application kit.

FOR FURTHER INFORMATION CONTACT: WilDon Solutions, Office of Grants Management Operations Center, 1515 Wilson Blvd., Third Floor Suite 310, Arlington, VA 22209 at 1–888–203–6161, e-mail *OPHSgrantinfo@teamwildon.com*, or fax 703–351–1138.

SUPPLEMENTARY INFORMATION:

Executive Summary: This announcement seeks applications from public and nonprofit private entities for one cooperative agreement to establish and operate a National Family Planning Training Center (NTC). A cooperative agreement is a type of grant assistance where ''substantial involvement'' is anticipated between the awarding agency and the recipient during performance of the contemplated project or activity. The cooperative agreement recipient is held to all requirements for Federal grants. The purpose of the NTC is to assist in planning, development, and coordination of training activities that will enhance and support training of personnel to carry out family planning service programs described in section 1001 of the Title X statute. The NTC cooperative agreement is national in scope. The successful applicant will work closely with the Office of Population Affairs/Office of Family Planning and other Title X-funded training entities.

I. Funding Opportunity Description

The Office of Population Affairs (OPA)/Office of Family Planning (OFP) announces the availability of approximately $300,000–$500,000 of Fiscal Year (FY) 2007 funds to support one National Family Planning Training Center cooperative agreement. Budgets submitted as part of the application for these funds should not exceed $500,000, inclusive of indirect costs.

The NTC cooperative agreement is intended to serve a national network of family planning providers to ensure that clients receive quality family planning services. In order to maximize the impact of the cooperative agreement on a national level, it is expected that the successful applicant will work closely with the OFP Central and Regional Offices, the ten Title X Regional Training Centers (RTCs), the Family Planning Male Training Center (FPMTC), and the Family Planning Clinical Training Center, as well as other federally funded training entities. It is expected that the project will have three major components:

A. *Compile, Coordinate, and Disseminate Training Information*—This includes establishing mechanisms for identifying, cataloging, and disseminating information related to training resources, materials, and events among Title X-funded training grantees, OPA/OFP Central and Regional Offices, and Title X service providers.

B. *Conduct Training Meetings*—In order to maximize the impact of Title X family planning training activities, it is necessary to periodically bring OFP staff, Title X grantees, and/or training entities together for planning, developing, coordinating, enhancing, and/or providing training at the national, regional and local levels. In addition, it is periodically necessary to bring together experts in various fields in order to ensure that training activities include the most current, evidence-based information available. Applicants should plan for: a) Up to two expert panels or work groups per year for up to 25 participants each; b) one meeting of Title X Federal staff and Title X-funded training grantees per year which will include up to 50 participants; c) one intensive, week-long health educator training each year for up to 35 participants, not including Federal officials and trainers; d) one meeting per year for up to 250 participants; and, e) a total of two national meetings of all Title X grantees (services, training, research) during the project period (approximately 300 participants each).

C. *Develop Training Resources and/or Materials*—In collaboration with the OPA/OFP, the NTC is expected to identify issues and/or topics with broad impact on the Title X service delivery system, and for which a consistent national training approach would serve the needs of service delivery providers. Annually, the NTC and OPA/OFP should choose up to two of these issues or topics for development and dissemination of training resources for use by Title X-funded projects.

Program Statute, Regulations, Guidelines, Legislative Mandates, and Program Priorities

Applicants should use the Title X legislation, regulations, legislative mandates, and other information included in this announcement, and in the application kit, to guide them in developing their applications.

Statute: Title X of the PHS Act, 42 U.S.C. 300 *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).'' Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to provide training for personnel to carry out family planning service programs as described in Section 1001 of the Act. Section 1008 of the Act, as amended, stipulates that ''none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.''

Regulations and Program Guidelines: The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants

should refer to the regulations in their entirety. Training provided must be consistent with the requirements for providing family planning services under Title X. These requirements can be found in the Title X statute, the implementing regulations (42 CFR part 59, subpart A), and the ''Program Guidelines for Project Grants for Family Planning Services,'' (January 2001). In addition, any training regarding sterilization of clients as part of the Title X program must be consistent with 42 CFR part 50, subpart B (''Sterilization of Persons in Federally Assisted Family Planning Projects''). Copies of the Title X statute, applicable regulations, and Program Guidelines can be obtained by contacting the OPHS Office of Grants Management, may be downloaded from the Office of Population Affairs (OPA) Web site at *http://opa.osophs.dhhs.gov*, and are provided in the application kit for this announcement.

Legislative Mandates: The following legislative mandates have been part of the Title X appropriations language for each of the last several years. In developing a proposal, the applicant should consider how these legislative mandates may apply to family planning training, and incorporate them as appropriate.

''None of the funds appropriated in this Act may be made available to any entity under title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities;'' and ''Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.''

Program Priorities: Each year the OFP establishes program priorities that represent overarching goals for the Title X program. Applications should include content that addresses the 2007 Title X program priorities as they relate to the requirements of this training announcement, and should provide evidence of the applicant's capacity to address future program priorities, as they evolve. The 2007 program priorities are as follows:

1. Assuring ongoing high quality family planning and related preventive health services that will improve the overall health of individuals, with priority for services to individuals from low-income families;

2. Assuring access to a broad range of acceptable and effective family planning methods and related preventive health services that include natural family planning methods, infertility services, and services for adolescents; highly effective contraceptive methods; breast and cervical cancer screening and prevention services that correspond with nationally recognized standards of care; STD and HIV prevention education, counseling, testing, and referral; activities that promote positive family relationships for the purpose of increasing family participation in reproductive health decision-making; extramarital abstinence education and counseling; and other preventive health services. The broad range of services does not include abortion as a method of family planning;

3. Assuring compliance with State laws requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest;

4. Encouraging participation of families, parents, and/or legal guardians in the decision of minors to seek family planning services; and providing counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities;

5. Addressing the comprehensive family planning and other health needs of individuals, families, and communities through outreach to hard-to-reach and/or vulnerable populations, and partnering with other community-based health and social service providers that provide needed services.

II. Award Information

The OPA/OFP anticipates awarding one National Family Planning Training Center cooperative agreement, funded with FY 2007 funds, in the amount of $300,000–$500,000. Total funding available is inclusive of indirect costs. The successful applicant should anticipate substantial involvement of the OFP project officer in the conduct of this cooperative agreement. The cooperative agreement will be funded in annual increments (budget periods), and may be approved for a project period of up to four years. The applicant should include a detailed budget for year one of the project period, and project total funding required for each subsequent year on the Standard Form (SF) 424 and SF 424A included in the Form OPHS–1 ''Grant Application.'' Funding for all budget periods beyond the first year of the cooperative agreement is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

III. Eligibility Information

1. *Eligible Applicants:* Any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a cooperative agreement under this announcement. Faith-based organizations are eligible to apply for this Title X national family planning training center cooperative agreement.

2. *Cost Sharing:* None required.

IV. Application and Submission Information

1. *Address to Request Application Package:* Application kits may be obtained electronically by accessing Grants.gov at *http://www.grants.gov* or GrantSolutions at *http://www.GrantSolutions.gov*. To obtain a hard copy of the application kit, contact WilDon Solutions at 1–888–203–6161. Applicants may fax a written request to WilDon Solutions at (703) 351–1138 or e-mail the request to *OPHSgrantinfo@teamwildon.com*. Applications must be prepared using Form OPHS–1 ''Grant Application,'' which is included in the application kit.

2. *Content and Form of Application Submission:* Applications must be submitted on the Form OPHS–1 and in the manner prescribed in the application kit. The application narrative should be limited to 75 double-spaced pages using an easily readable serif typeface such as Times Roman, Courier, or GC Times, 12 point font. The page limit does not include budget; budget justification; required forms, assurances, and certifications as part of the OPHS–1; or appendices. All pages, charts, figures and tables should be numbered, and a table of contents should be provided. The application narrative should be numbered separately and clearly show the 75 page limit. If the application narrative exceeds 75 pages, only the first 75 pages of the application narrative will be reviewed. All information that is critical to the proposed project should be included in the body of the application. Appendices may provide curriculum vitae, organizational structure, examples of organizational capabilities, or other supplemental information which supports the application. However, appendices are for supportive information only, and should be limited to only that which is necessary to

support the application narrative. Appendices should be clearly labeled.

For all non-governmental applicants, documentation of nonprofit status must be submitted as part of the application. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. A copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals; and,

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.

For local, nonprofit affiliates of State or national organizations, a statement signed by the parent organization indicating that the applicant organization is a local nonprofit affiliate must be provided in addition to any one of the above acceptable proof of nonprofit status.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps needed to obtain one. Instructions for obtaining a DUNS number are included in the application package, or can be downloaded from the OPA Web site.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents.

Application Requirements and Content

General Requirements: Applicant organizations should demonstrate significant expertise and experience in the design, development, implementation, successful completion, and evaluation of family planning and related preventive health training activities. Applicants should also describe experience with successfully managing training resources and working with other training entities, consultants, service providers, and Federal officials. The applicant should demonstrate familiarity with general public health principles; national standards of care for family planning and related preventive health issues; program management principles; fiscal issues germane to Title X providers; information/education/communication concepts; evidence-based learning theory; and adult learning behavior, including the applicability to proposed training activities.

Applicants should provide evidence of familiarity with Title X family planning requirements, the Title X grantee structure; and Title X-funded training entities (*e.g.*, the ten Title X Regional Training Centers, the Family Planning Male Training Center, and the Family Planning Clinical Training Center). The application should include familiarity with and willingness to collaborate with other federally funded training entities (*e.g.*, Health Resources and Services Administration [HRSA] AIDS Education Training Centers [AETCs]; Centers for Disease Control and Prevention [CDC] Prevention Training Centers [PTCs]; Substance Abuse and Mental Health Service Administration [SAMHSA] Addiction Technology Transfer Centers [ATTCs]; Administration for Children and Families [ACF] Infant Adoption Awareness Training Program [IAATP], etc.) in order to maximize resources and achieve program objectives.

Applicants must provide evidence of relevant administrative, management, and training expertise and experience that will ensure successful completion of all component requirements of the NTC. The proposed program plan should fully describe a strategy for each component, as well as an ongoing system for planning, monitoring, and evaluation. Goal statement(s) and related outcome objectives should be specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.). The design of all training activities and materials, including all curricula and topic content, should be consistent with Title X statute, regulations, legislative mandates, program guidelines, and program priorities.

It is expected that the applicant will provide detailed information regarding organizational capacity and expertise of proposed staff. Applicants should propose a staffing pattern that includes sufficient detail for reviewers to assess adequacy related to the proposed work plan, and the expertise required to carry out the project.

The proposed budget should be consistent with the requirements of the national family planning training center cooperative agreement. Proposed project activities should be tied directly to budgeted costs. Both the final project plan and plan for utilization of funds will be negotiated with the OFP project officer within 60 days of the cooperative agreement award, and annually during the project period. It is expected that the successful applicant will maintain flexibility in schedule and resource planning in order to respond to emerging needs, lessons learned, and annual Title X program priorities.

Component requirements: Applicants should be specific in describing their proposed approach to the requirements under each of the following components:

A. *Compile, Coordinate, and Disseminate Training Information:* The purpose of this component is to promote the sharing of information among Title X-funded training entities in order to decrease duplication and maximize training resources. The applicant should include a plan for:

(1) Gathering stakeholder (Title X-funded training entities, Federal officials, etc.) input regarding this component;

(2) Ongoing collaboration with Title X-funded training entities;

(3) Ongoing interaction with other federally funded training entities;

(4) Systematically identifying training materials developed or used by all Title X-funded training entities over the past five years;

(5) Collecting current training information/materials/modules, and training calendars;

(6) Developing a catalog or index of available materials;

(7) Developing a speaker/consultant directory;

(8) Establishing a mechanism to ensure that the catalog/index of training materials and speaker/consultant directory are updated at least annually;

(9) Developing, implementing, and maintaining a NTC web site;

(10) Developing mechanisms for disseminating training information/materials;

(11) Proposing other tools or strategies for facilitating sharing of information among Title X training centers and projects. This might include a list serve of Title X-funded training centers, newsletters, linkages to other Title X- and federally-funded training entity web sites, etc.; and,

(12) Utilizing electronic technologies to address many of the requirements of this component. B. *Conduct Training Meetings:* The purpose of this component is to ensure that personnel working in Title X family planning clinics have access to the knowledge, skills, and attitudes necessary for the effective delivery of family planning services. The successful applicant will be responsible for conducting multiple meetings during each year of the project period. Planning for each meeting

should include face-to-face meetings with the OFP (as indicated for the size and complexity of the meeting). All lodging and per diem expenses should not exceed the most current Federal rates. Travel expenses should be limited to the most reasonable fares available. In close collaboration with the OFP project officer, the applicant should describe an approach for planning and conducting the five distinct types of meetings as described below:

(1) *Up to two expert panels or work groups per year for up to 25 participants each.* These expert panels will help ensure that training information is evidence-based and current. Plans for each of these meeting should include:

(a) Developing the meeting agenda;

(b) Designing and disseminating meeting information;

(c) Arranging for hotel/meeting space for all aspects of the meeting (lodging rates are not to exceed the Federal rates for the year in which the meetings are held);

(d) Working with meeting site on all meeting requirements before, during, and after the meeting;

(e) Providing for expenses for up to 20 non-Federal participants (including travel, lodging, and per diem);

(f) Developing and implementing a Web site for meeting information dissemination and registration;

(g) Interfacing with meeting participants, including on-site check in;

(h) Compiling and producing all meeting materials;

(i) Identifying, contacting, and arranging for approximately 3 non-Federal speakers or consultants at a cost not to exceed $2000 per consultant (including consultant fees, travel expenses, lodging, and per diem);

(j) Providing for meeting facilitation;

(k) Evaluating the success of the meeting in achieving overall meeting objectives;

(l) Producing and disseminating meeting proceedings as appropriate; and,

(m) Compiling and disseminating information and/or materials identified or developed as a result of the meeting.

(2) *One annual meeting of Title X Federal staff and Title X-funded training grantees for up to 50 participants.* This meeting will provide an opportunity for Federal family planning staff and Title X-funded training entities to discuss issues that impact training, and plan for the upcoming year. The OPA expects that the NTC will be responsible for all aspects of meeting planning, logistics, management, and follow-up as listed above, with the exception of providing for participant expenses.

(3) *One intensive, week-long training institute for male health educators each year for up to 35 participants, not including Federal officials and trainers.* The purpose of this training event is to ensure that health educators working directly with male clients in Title X clinics have the knowledge skills, and attitudes to provide accurate, evidence based information. Preparation for this meeting requires significant planning and coordination among trainers and OPA/OFP staff. In close collaboration with the OPA/OFP project officer, the applicant should describe an approach to this meeting that includes:

(a) Planning the Meeting

1. Meeting budget;

2. Meeting logistics (hotel, location, set-up, all meeting arrangements, etc. Hotel room cost should not exceed the most current Federal lodging rates);

3. Arrange for planning meetings with trainers and OPA/OFP staff, including at least two conference calls and one face-to-face meeting at the OPA/OFP office in Rockville.

4. Arrange for/communicate with trainers, including all correspondence and travel arrangements for planning meetings and health educator training. Consultant fees per trainer (approximately seven trainers) should average approximately $3,500 including preparation time, participation in all planning meetings, and the health educator training event. Travel expenses, lodging, and per diem for the face-to-face meeting and health educator event are provided in addition to consultant fees;

5. Prepare for AV needs;

6. Coordinate with OFP project officer in nomination, application process, and selection of trainees;

7. Develop a list of participants, trainers, and others to be determined with input from OFP project officer;

8. Provide for expenses for up to 35 participants for up to six days on-site at the health educator training event (this includes lodging and per diem, but does not include round trip travel expenses to the training site).

9. Design and implement a web site with meeting information/registration/ etc.

10. Coordinate agenda development and training outline;

11. Produce meeting and training materials (signage, packets, notebooks, name tags, etc.);

12. Develop participant evaluation forms; and,

13. Any other activities/ responsibilities for planning the meeting, working with collaborators and speakers, and disseminating meeting information.

(b) Managing the Meeting On-site

1. Assess set-up/modify meeting room(s) as needed (including AV);

2. Coordinate with hotel/meeting site throughout meeting;

3. Set up for registration and materials dissemination;

4. Staff registration table;

5. Coordinate speaker arrival/address speaker needs;

6. Identify and appropriately address issues that arise throughout meeting;

7. Manage all on-site meeting issues (financial, logistics, etc.);

8. Distribute and collect participant meeting evaluation forms; and,

9. Any other issues related to managing the meeting on-site.

(c) Follow-up

1. Evaluate the meeting

a. Process of planning and conducting meeting;

b. Outcome, including meeting participation and participant evaluation;

2. Produce/disseminate proceedings, as indicated;

3. Compile/make available information or materials identified/ developed as a result of the meeting;

4. In collaboration with OFP, produce and disseminate trainer thank-you letters/other correspondence as necessary;

5. Ensure all meeting expenses are finalized and paid in a timely manner;

6. Produce and submit final meeting accounting and evaluation report within 45 days after the meeting is held; and,

7. Any other meeting follow-up identified and agreed upon by OFP and the successful applicant.

(4) *One HIV grantee training and technical assistance meeting (HIV meeting) per year for up to 250 participants.* The purpose of this meeting is to improve service delivery related to HIV counseling, testing, and referral. It is expected that this meeting will include OPA/OFP staff, Title X-funded training centers, and service grantees and projects that receive Title X supplemental HIV prevention integration funds. Information provided at the meeting should include relevant, current, evidence-based information on HIV/AIDS issues, as well as an opportunity for Title X HIV grantees and projects to share information and experiences. It is expected that planning for the first HIV meeting will begin very soon after the NTC cooperative agreement is funded, and the meeting will be held before the end of year one of the project period.

(5) *Two National Grantee Meetings (NGM) for all Title X-funded grantees*

(services, training, research) for up to 300 participants each. These two meetings should provide current, relevant, evidence-based information on family planning and related reproductive and preventive health issues for men and women; as well as Federal policy information and other relevant issues that impact Title X service grantees and the training and research grantees that support Title X service delivery. It is anticipated that the first NGM will take place early during year two of the project period, and a second NGM during year four of the project period. Planning for the first meeting should begin during the first year of the project period, and the meeting will be held early in year two of the project period.

It is expected that persons working in Title X-funded agencies will attend the HIV meeting and the NGM at nominal or no charge. The successful applicant will be responsible for all costs associated with planning and conducting these meetings, excluding personal participant expenses such as travel, lodging, and per diem.

In close collaboration with the OFP project officer, the successful applicant will be responsible for all aspects of planning, producing, and evaluating both the HIV meetings and the NGMs. The process for planning these meetings will be negotiated with the OFP project officer within 45 days after funds are awarded. If a planning committee is used, it is expected that the NTC will be responsible for all costs associated with planning committee meetings.

The expectations for both the HIV meetings and the NGMs are the same. All aspects of these meetings, including, but not limited to, agenda, speakers, and meeting location, will be approved by the OFP project officer prior to implementation. At a minimum, the successful applicant will be responsible for the following, and should address how this will be accomplished in the project proposal:

(a) Planning the Meeting

1. Meeting budget;
2. Planning committee (if determined to be necessary);
3. Meeting logistics (hotel, location, set-up, all meeting arrangements, etc.);
4. Arrange for/communicate with speakers/moderators, including invitation letters and travel arrangements (cost per speaker should not exceed $2,000 for travel expenses and consultant fees);
5. Prepare for AV needs;
6. Develop invitation list of Title X grantee agencies, Federal participants, speakers, and others to be determined with input from OFP project officer;
7. Produce and disseminate a ''Save the Date'' card (may be by electronic means);
8. Design and implement a web site with meeting information/registration/etc.;
9. Coordinate agenda development;
10. Secure method for granting Continuing Education Units (CEUs);
11. Produce meeting materials (signage, packets, notebooks, name tags, etc.);
12. Develop participant evaluation forms; and,
13. Any other activities/responsibilities for planning the meeting, working with collaborators and speakers, and disseminating meeting information.

(b) Managing the Meeting On-site

1. Assess set-up/modify meeting room(s) as needed (including AV);
2. Coordinate with hotel/meeting site throughout meeting;
3. Set up for registration and materials dissemination;
4. Staff registration table throughout meeting;
5. Coordinate speaker arrival/address speaker needs (speaker ready-room);
6. Identify and appropriately address issues that arise throughout meeting;
7. Manage all on-site meeting issues (financial, logistics, etc.);
8. Distribute and collect participant meeting evaluation forms; and,
9. Any other issues related to managing the meeting on-site.

(c) Follow-up

1. Evaluate meeting;
a. process of planning and conducting meeting;
b. outcome, including meeting participation and participant evaluation;
2. Produce/disseminate proceedings (if determined to be necessary);
3. Compile/make available information or materials identified/developed as a result of the meeting;
4. In collaboration with OFP, produce and disseminate speaker/moderator thank-you letters/other correspondence as necessary;
5. Ensure that all meeting expenses are finalized and paid in a timely manner;
6. Produce and submit final meeting accounting and evaluation report within 45 days after the meeting is held; and,
7. Any other meeting follow-up identified and agreed upon by the OFP project officer and the successful applicant.

C. *Develop Training Resources and/or Materials*—The purpose of this component is to identify issues and/or topics with broad impact on the Title X service delivery system, and provide a consistent national training approach that would serve the needs of service delivery providers. In close collaboration with the OFP project officer, the successful applicant will identify and select topics for which a national training approach would be beneficial to Title X service providers. Each year, the NTC and OFP project officer should select up to two of these topics to be developed into training resources and/or modules for use by Title X-funded projects. The NTC is expected to develop mechanisms for dissemination of these training materials to Title X-funded entities. This might include electronic as well as hard copy availability. Applications should include strategies for addressing the following:

(1) All aspects of researching evidence-based information on the chosen topic(s);

(2) Consulting with experts in the topic(s) chosen, as applicable;

(3) Preparing an overview and outline of the module/materials to be developed, including references;

(4) Obtaining OFP project officer approval prior to development;

(5) Developing strategies for notification and dissemination of modules/materials to Title X-funded entities. This may include hard copy, as well as electronic availability; and,

(6) Developing a strategy for review and updating of topic list at least annually.

Schedule of Cooperative Agreement Requirements—The following represents an overview of general activities for years one and two of the project. Assuming a four-year project period, activities and timeline for years three and four will be determined during year two. Activities and requirements will be similar to those in years one and two. This is not intended to be an exhaustive list, but rather to provide a general outline of NTC activities throughout the project period. The successful applicant should plan to have ongoing verbal and electronic communication with the OFP project officer, and to meet with the OFP project officer, Director, OFP, and others identified by the OFP at least every three months during year one and every six months during year two of the project. The applicant should plan for at least two of the four meetings in year one to occur face-to-face at the OFP office in Rockville, MD. At least one face-to-face meeting will be held in subsequent years of the project. The meeting schedule for years three and

four will be negotiated during year two of the project. The year one budget submitted with this application; should reflect communication and required meetings with the OFP project officer.

Year One—In close collaboration with the OFP project officer,

1. *Within 30 days of date of Notice of Grant Award (NGA)*—with OFP in Rockville, MD.

2. *Year 1*—It is expected that the final project plan and timeline will be developed in the first three months of the project, and that implementation of the plan will begin in the first half of the first year. The plan should include a timeline for implementation of all activities. It is expected that planning for the first HIV and national grantee meetings will begin soon after funding in the first project year.

a. Establish National Training Center operations, including finalizing staff;

b. Finalize a timeline for year one activities;

c. Establish and implement a system for ongoing communication with other Title X-funded training entities;

d. Develop and implement a system for collecting, compiling, and disseminating training materials from Title X-funded training entities, including developing and maintaining an index or catalog of materials;

e. Develop criteria for and establish an online directory of training consultants, including a mechanism for ensuring that information is current:

f. Assess current administrative, management, fiscal, clinical, and information/education issues facing providers of Title X-funded services;

g. Identify current Federal priorities and issues that impact Title X service delivery;

h. Identify and plan meetings to be held in year one of the project;

i. Conduct meetings as agreed upon with OFP project officer;

j. Plan and conduct the year one HIV grantee meeting;

k. Begin planning the NGM to be held early in year two of the project;

l. Identify possible topics for development of training materials;

m. Determine which topic(s) will be developed into training materials;

n. Develop and disseminate training module(s);

o. Draft a plan for training events to be held in subsequent project years; and,

p. Develop and submit non-competing continuation application for year two of the project, including progress report for year one and project plan, budget, and budget justification for year two.

3. *Year 2*

a. Review program plan and revise/modify as necessary;

b. Assess implementation and status of year one activities. Modify as necessary;

c. Review Title X priorities and their impact on training activities;

d. Review issues impacting service delivery;

e. Establish a timeline for year two activities;

f. Identify focus of training meetings to be held in year two;

g. Plan and conduct small meetings as agreed upon with OFP project officer;

h. Continue collecting, compiling, and disseminating training materials from other Title X-funded training entities, ensuring that all materials are the most current available;

i. Ensure that the consultant directory is current;

j. Plan and conduct the year two HIV grantee meeting;

k. Plan and conduct the National Grantee Meeting;

l. Review and update possible topics for development of training modules;

m. Select, develop, and disseminate training module(s);

n. Review and revise the plan for training events to be held in subsequent project years;

o. Develop and submit non-competing continuation application for year three of the project, including progress report for year two and project plan and budget for year three;

p. Establish schedule for meetings with OFP project officer; and,

q. Finalize activities for years three and four of the project period.

3. *Submission Dates and Times:* To be considered for review, applications must be received by the Office of Public Health and Science, Office of Grants Management, by 5 p.m. Eastern Time on July 6, 2007. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date requirement in this announcement supersedes the instructions in the OPHS–1 form.

Submission Mechanisms The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the cooperative agreement announcement will not be accepted for review and will be returned to the applicant.

While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the Grants.gov and GrantSolutions.gov systems is encouraged. Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review.

In order to apply for new funding opportunities which are open to the public for competition, you may access the Grants.gov Web site Portal at *http://www.Grants.gov*. All OPHS funding opportunities and application kits are made available on Grants.gov. If your organization has/had a grantee business relationship with a grant program serviced by the OPHS Office of Grants Management, and you are applying as part of ongoing grantee related activities, please access *http://www.GrantSolutions.gov*.

Electronic grant applications must be received no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of this announcement using one of the electronic submission mechanisms specified. All required hard copy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web site Portal: The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov*.

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program-related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the GrantSolutions system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the GrantSolutions system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the GrantSolutions System: The electronic grants management system, *http://www.GrantSolutions.gov*, provides for applications to be submitted electronically. When submitting applications via the GrantSolutions system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program-related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the GrantSolutions system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the GrantSolutions Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission, the GrantSolutions system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the GrantSolutions system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications: Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management c/o WilDon Solutions, Office of Grants Management Operations Center, 1515 Wilson Blvd., Third Floor Suite 310, Arlington, VA 22209, Attention Office of Public Health and Science/Office of Grants Management, regarding Office of Population Affairs/Office of Family Planning National Family Planning Training Center Cooperative Agreement, no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. *Intergovernmental Review:* Applicants under this announcement are subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for the state in which the applicant is located. The application kit contains the currently available listing of the SPOCs that have elected to be informed of the submission

of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC should forward any comments to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20852. The SPOC has 60 days from the due date as listed in the **DATES** section of this announcement to submit any comments. For further information, contact the OPHS Office of Grants Management at 240–453–8822.

5. *Funding Restrictions:* The allowability, allocability, reasonableness and necessity of direct and indirect Costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

Indirect costs are limited to eight percent (8%) of modified total direct costs as a flat amount for reimbursement under training grants (Grants Policy Directive Part 3.01: Post-Award-Indirect Cost and other Cost Policies, HHS transmittal 98.01).

6. *Other Submission Requirements*—Applicants must submit a one page abstract of the application.

V. Application Review Information

1. *Criteria:* Eligible cooperative agreement applications will be reviewed according to the following criteria, as set out in the Title X family planning training regulations at 42 CFR 59.206:

1. The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations at 42 CFR 59.205 as they relate to the training expectations addressed in this announcement (25 points);

2. The extent to which the training program promises to fulfill the family planning services delivery needs of the area to be served (20 points);

3. The extent to which the proposed training program will increase and/or improve the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services (15 points);

4. The administrative and management capability and competence of the applicant (15 points);

5. The competence of the applicant project staff in relation to the services to be provided (15 points); and,

6. The capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and in training plan design (10 points).

2. *Review and Selection Process:* The Office of Family Planning/Office of Population Affairs is responsible for evaluating applications and setting funding levels according to the criteria set out in 42 CFR 59.206. Eligible applications will be reviewed by a panel of independent reviewers and will be evaluated based on the criteria listed above. In addition to the independent review panel, there will be Federal staff reviews of each application for programmatic and grants management compliance.

Final award decisions will be made collaboratively by the Deputy Assistant Secretary for Population Affairs (DASPA) and the Director, Office of Family Planning. In making award decisions, one cooperative agreement will be awarded which best promotes the purposes of sections 1001 (family planning services) and 1003 (family planning training) of the Public Health Service Act, and the expectations of the cooperative agreement as described in this announcement. The decision will take into account the reasonableness of the estimated cost considering available funding, and the likelihood that the project activities will result in the benefits expected.

VI. Award Administration Information

1. *Award Notices:* The OPA does not release information about individual applications during the review process. When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award (NGA), signed by the Director of the Office of Public Health and Science (OPHS), Office of Grants Management (OGM). This document specifies to the successful applicant the amount of money awarded, the purposes of the cooperative agreement, the length of the project period, terms and conditions of the cooperative agreement award, and the amount of funding, if any, to be contributed by the recipient to project costs. In addition, the NGA identifies the OPHS, OGM grants specialist and OFP project officer assigned to the cooperative agreement.

This cooperative agreement will be awarded for a project period of up to four years, and will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the cooperative agreement is contingent upon submission and approval of a non-competing continuation application, satisfactory progress of the project, efficient and effective use of cooperative agreement funds, and the continued availability of funds.

2. *Administrative and National Policy Requirements:* In accepting this award, the cooperative agreement grant recipient stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the cooperative agreement.

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from a project supported by a grant under this part, subject, however, to a royalty-free, non-exclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

Federal grant support must be acknowledged in any publication developed or training provided using Title X funds. All publications developed or purchased with Title X funds must be consistent with the requirements of the program. The cooperative agreement recipient will be expected to make available, at cost, all materials developed with Title X funds as requested by other Title X projects.

The successful applicant will be responsible for the overall management of activities within the scope of the approved project plan, and will work closely with the OFP project officer. The project officer will review and approve all aspects of the planning, implementation, and evaluation of the project components, as well as plans for the use of resources as part of this cooperative agreement. Within 30 days of Notice of Grant Award, the successful applicant is expected to meet with the OFP project officer; Director, OFP; and others at the OFP Central Office in Rockville, MD to finalize a time line and schedule of activities for years one and two of the project. Schedule of activities for years three and four of the project will be developed and approved during year two of the project.

The OPHS requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money, and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. *Reporting:* Each year of the project period, the cooperative agreement recipient is required to submit a non-competing application which includes an annual progress report for the current year, and a project work plan, budget, and budget justification for the upcoming year. The progress report should contain, at a minimum, a report on both process and outcome objectives, including evaluation of the activities as a whole, as well as for each component of NTC activities.

For component requirements, the progress report should contain, at a minimum, information related to the following:

Component A., *Compile, Coordinate, and Disseminate Training Information:* Obtaining and incorporating stakeholder input; gathering and cataloging training materials; design, implementation, and maintenance of NTC Web site; mechanisms for making information available; and, use of electronic technologies in addressing the requirements of this component.

Component B., *Conduct Training Meetings:* (a) Title of training event; (b) location; (c) topic(s) covered; (d) presenter(s) (as applicable); (e) number of participants; (f) agencies sponsoring participants; and (g) evaluation summary (including whether meeting objectives were met); and, (h) credit hours or CEUs available.

Component C., *Develop Training Resources and/or Materials:* The progress report should contain process and outcome information related to any materials developed as a result of this cooperative agreement.

All information should be provided in adequate detail for the reviewer to assess the planning, implementation, evaluation, and status of project activities compared to the approved work plan. If deviations from the approved work plan were necessary, the progress report should fully explain and justify modifications.

The work plan for the upcoming year should clearly reflect proposed NTC activities, including timeline; justification for any modifications from the previous year; S.M.A.R.T. objectives; and evaluation plan. The budget should reflect proposed costs to carry out the project plan. Sufficient detail should be provided so that the reviewer is able to determine the adequacy and appropriateness of budgeted items related to the proposed activities.

The cooperative agreement recipient is required to submit an annual Financial Status Report (FSR) within 90 days after the end of each budget period. Agencies that receive a total of $500,000 or greater of Federal funds must undergo an independent audit in accordance with OMB Circular A–133.

VII. Agency Contacts

Administrative and Budgetary Requirements

For application kits, submission of hard copy applications, and information on budget and business aspects of the application, please contact: WilDon Solutions, Office of Grants Management Operations Center, 1515 Wilson Blvd., Third Floor Suite 310, Arlington, VA 22209 at 1–888–203–6161, e-mail *OPHSgrantinfo@teamwildon.com*, or fax 703–351–1138.

Program Requirements

For information related to family planning program requirements, contact: WilDon Solutions, Office of Grants Management Operations Center, 1515 Wilson Blvd., Third Floor Suite 310, Arlington, VA 22209 at 1–888–203–6161, e-mail *OPHSgrantinfo@teamwildon.com*, or fax 703–351–1138. Identify that your inquiry is related to the Office of Population Affairs/Office of Family Planning program announcement for the National Family Planning Center Cooperative Agreement.

VIII. Other Information

Definitions: For the purposes of this announcement, the following definitions apply:

Family planning training—job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services. Further description of family planning services may be found in the authorizing legislation, implementing regulations, and program guidelines.

Application—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

Cooperative Agreement—An award instrument of financial assistance where ''substantial involvement'' is anticipated between the HHS awarding agency and the recipient during performance of the contemplated project or activity. ''Substantial involvement'' means that the recipient can expect Federal programmatic collaboration or participation in managing the award. The entity that receives a Federal cooperative agreement assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding, and is held to all requirements for Federal grants.

Evidence-based—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

Project—those activities described in the application and supported under the approved budget.

Technical Assistance Conference Call: There will be an opportunity for prospective applicants to participate in a technical assistance conference call to be held within one month after publication of this Notice in the **Federal Register**. For more information regarding this opportunity, including date, registration information, and how to join the call, please consult the OPA Web site at *http://opa.osophs.dhhs.gov*.

Dated: May 1, 2007.

Evelyn M. Kappeler,

Acting Director, Office of Population Affairs.

[FR Doc. E7–8668 Filed 5–4–07; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for nominations for public members.

SUMMARY: 42 U.S.C. 299c, section 931 of the Public Health Service (PHS Act), established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to actions of the Agency to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

Seven current members' terms will expire in November 2007. To fill these positions in accordance with the legislative mandate establishing the

Council, we are seeking individuals who are distinguished: (1) In the conduct of research, demonstration projects, and evaluations with respect to health care; (2) in the fields of health care quality research or health care improvement; (3) in the practice of medicine; (4) in other health professions; (5) in representing the private health care sector (including health plans, providers, purchasers) or administrators of health care delivery systems; (6) in the fields of health care economics, information systems, law, ethics, business, or public policy; and, (7) in representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary above.

DATES: Nominations should be received on or before June 15, 2007.

ADDRESSES: Nominations should be sent to Ms. Deborah Queenan, AHRQ, 540 Gaither Road, Room 3238, Rockville, Maryland 20850. Nominations also may be faxed to (301) 427–1341.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Queenan, AHRQ, at (301) 427–1330.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 931, of the PHS Act, provides that the National Advisory Council for Healthcare Research and Quality shall consist of 21 appropriately qualified representatives of the public appointed by the Secretary of Health and Human Services and, in addition, ex officio representatives from other Federal agencies specified in the authorizing legislation, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. The Council meets in the Washington, DC., metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected presently by the Secretary to serve on the Council beginning with the meeting in the spring of 2008. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's resume or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department seeks a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies, and therefore, particularly encourages nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: April 26, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–2239 Filed 5–4–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for ''Ambulatory Care Patient Safety Proactive Risk Assessment (P20),'' are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Ambulatory Care Patient Safety Proactive Risk Assessment (P20).

Date: May 21–22, 2007 (Open on May 21 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: April 23, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–2238 Filed 5–2–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 27, 2007, from 8 a.m. to 4 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Mimi Phan, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Mimi.Phan@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will do the following: (1) Discuss review of

oncology products granted pediatric exclusivity under the Best Pharmaceuticals for Children Act (BPCA); and (2) discuss 13-cis retinoic acid: summary of clinical experience, including access through iPledge, and additional clinical studies for the treatment of patients with neuroblastoma to be conducted under the BPCA.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person on or before June 13, 2007. Oral presentations from the public will be scheduled between approximately 10 a.m. to 10:30 a.m., and 2 p.m. to 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 5, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 6, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mimi Phan at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 1, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–8656 Filed 5–4–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, Endowment Program Review.

Date: May 29–30, 2007.

Time: 5 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, (301) 402–1366, *watsonl@ncmhd.nih.gov.*

Dated: April 30, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2213 Filed 5–4–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 22–23, 2007.

Closed: May 22, 2007, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: May 22, 2007, 8:30 a.m. to 12:10 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: May 22, 2007, 12:10 p.m. to 1:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: May 22, 2007, 1:10 p.m. to 4:40 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: May 22, 2007, 4:40 p.m. to 5:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: May 23, 2007, 8 a.m. to 8:30 a.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Open: May 23, 2007, 8:30 a.m. to 12:15 p.m.
Agenda: Committee Discussion.
Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: May 23, 2007, 12:15 p.m. to 1:15 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Open: May 23, 2007, 1:15 p.m. to 4:45 p.m.
Agenda: Committee Discussion.
Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Closed: May 23, 2007, 4:45 p.m. to 5:45 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.
Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2215 Filed 5–4–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.
Date: June 14–15, 2007.
Open: June 14, 2007, 7:30 a.m. to 7:45 a.m.
Agenda: Personal qualifications and performance, and competence of individual.
Place: National Institutes of Health, Clinical Center, 9000 Rockville Pike, Room 2C116, Bethesda, MD 20892.
Closed: June 14, 2007, 7:45 a.m. to 6:40 p.m.
Agenda: To review and evaluate unit of Primate studies (LCTS) and Lab of Neuroimaging.
Place: National Institutes of Health, Clinical Center, 9000 Rockville Pike, Room 2C116, Bethesda, MD 20892.
Closed: June 15, 2007, 8 a.m. to 6 p.m.
Agenda: To review and evaluate Lab of Clinical and Translational Studies and two Tenure Track Investigators, Lab of Neurogenetics (LNG).
Place: National Institutes of Health, Clinical Center, 9000 Rockville Pike, Room 2C116, Bethesda, MD 20892.
Contact Person: Trish Scullion, Chief of Administrative Branch, National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3061, Rockville, MD 20852, 301–443–6076.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 30, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2216 Filed 5–4–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.
Date: June 21–22, 2007.
Open: June 21, 2007, 9 a.m. to 11 a.m.
Agenda: Administrative reports and program discussion.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: June 21, 2007, 11 a.m. to 5 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: June 22, 2007, 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Sheldon Kotzin, MLS, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38/Room 2W06, Bethesda, MD 20894, 301–496–6921, *Sheldon_Kotzin@nlm.nih.gov*.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 30, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 07–2214 Filed 5–4–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–39]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Public Housing Agency Plan

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) must submit 5-year plans and annual plans for tenant-based assistance and public housing operating subsidies, including Deregulated and Streamlined Plans. Through these plans a PHA will advise HUD, its residents, and the public of the PHA's mission for serving the needs of low-income and very low-income families and the PHA's strategy for addressing those needs.

DATES: *Comments Due Date:* May 14, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, QDAM Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_Deitzer@hud.gov,* telephone (202) 708–2374. This is not a toll-free number. Copies of documentation submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection requirement as described below. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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 agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency Plan.

Description of Information Collection: Public Housing Agencies (PHAs) must submit 5-year plans and annual plans for tenant-based assistance and public housing operating subsidies, including Deregulated and Streamlined Plans. Information provided by a PHA will advise HUD, its residents, and the public of the PHA's mission for serving the needs of low-income and very low-income families and the PHA's strategy for addressing those needs.

OMB Control Number: 2577–0226.

Agency Form Numbers: HUD 50075, HUD 50077.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 13 hours per applicant. The estimated number of respondents is 4139. The frequency of response is once. The total public burden is estimated to be 52,698 hours.

Status: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 1, 2007.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E7–8619 Filed 5–4–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5141–N–03]

Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: Meetings will be held on Tuesday, May 22, 2007, 8 a.m. to 5 p.m., Wednesday, May 23, 2007, 8 a.m. to 5 p.m., and Thursday, May 24, 2007, 8 a.m. to 10 a.m. eastern standard time.

ADDRESSES: These meetings will be held at the Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, Virginia 22203, telephone (703) 243–9800.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, 42 U.S.C. 5403(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and

safety standards and procedural and enforcement regulations, and with developing proposed model installation standards.

Tentative Agenda:

A. Welcome and Introductions.
B. Departmental Status Reports.
C. Full Committee meeting.
D. Alternative Construction.
E. Potential Emergency MHCSS Changes.
F. Accessibility—Universal Design—Visit ability.
G. Alternative Foundation Testing Protocols.
H. Public Testimony.
I. Reports and Actions on Committee work.
J. Adjourn.

Dated: April 26, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–8620 Filed 5–4–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, May 11, 2007—1:30 p.m. to 4 p.m.

ADDRESSES: F.M. Kirby Center, 71 Public Square, Wilkes-Barre, PA 18701.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton, PA 18042, (610) 923–3548.

Dated: April 30, 2007.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 07–2236 Filed 5–4–07; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Palmyra Atoll National Wildlife Refuge and Kingman Reef National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment and a step-down research management plan and environmental assessment; and announcement of a public open house meeting.

SUMMARY: This notice advises the public that we the U.S. Fish and Wildlife Service (Service, we) intend to initiate a single planning process to consecutively develop a comprehensive conservation plan (CCP) and environmental assessment for the Palmyra Atoll National Wildlife Refuge (NWR), and a step-down research management plan (RMP) and environmental assessment for both Palmyra and Kingman Reef NWRs. This notice also announces a public open house meeting; see **SUPPLEMENTARY INFORMATION** for the details. Both NWRs are low coral atolls located in the Central Pacific Ocean approximately 1,000 miles south of Hawai'i. We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Please provide written comments on these proposals by June 6, 2007. We will hold a public open house meeting on May 8, 2007, to begin the CCP and RMP planning process; see **SUPPLEMENTARY INFORMATION** for date, time, and location.

ADDRESSES: Address comments, questions, and requests for further information to William Smith, Refuge Manager, Palmyra Atoll National Wildlife Refuge Complex, 300 Ala Moana Boulevard, Room 5–231, Box 50167, Honolulu, HI 96850. Comments may be faxed to the Refuge Complex office at (808) 792–9586, or e-mailed to *william_smith@fws.gov*. Additional information concerning these NWRs is available on the Internet at *http://www.fws.gov/pacificislands/wnwr/nwrindex.html*. The address for the public meeting location is listed under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: William Smith, (808) 792–9550.

SUPPLEMENTARY INFORMATION: With this notice, we initiate the process for development of a CCP for Palmyra Atoll NWR and a RMP for the Palmyra Atoll and Kingman Reef NWRs.

Background

Planning Requirements

The National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contribute toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

A step-down RMP would address research goals, objectives, and strategies for research actions and include findings of appropriateness of a refuge use, and compatibility determinations for all research activities proposed for or occurring on Palmyra Atoll and Kingman Reef NWRs.

The Service will prepare separate environmental assessments for the CCP and RMP pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

We establish each unit of the National Wildlife Refuge System with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to

guide which public uses will occur on a refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation of important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the Refuges' establishment purposes and the mission of the National Wildlife Refuge System.

We will conduct a planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and provide public comments. We request input for issues, concerns, ideas, and suggestions for the future management of the Palmyra Atoll and Kingman Reef NWRs. We will also give the public an opportunity to provide input at an open house to scope issues and concerns. All information provided voluntarily by mail, phone, or at public meetings becomes part of our official public record. We will handle requests for comments received in accordance with the Freedom of Information Act, NEPA, and Service and Departmental policies and procedures.

The Refuges

Palmyra Atoll and Kingman Reef are the northernmost atolls in the Line Islands Archipelago in the equatorial Pacific Ocean. Both are located approximately 1,000 miles south by west of Honolulu, Hawai'i, and are situated about 5 degrees north of the Equator. During WWII, the U.S. Navy stationed over 6,000 personnel at Palmyra Atoll. The military dredged a seaplane runway through the central lagoon and built a connective causeway that bisected the lagoon across the remaining reef flat. Relatively small, disconnected islets were joined together with dredge spoil, increasing both the elevation and terrestrial footprint of the emergent atoll. An extensive base and supporting infrastructure were built, including a 1-mile land-based airplane runway surfaced with crushed coral. The Palmyra Atoll NWR was established in 2001 through DOI Secretarial Order 3224. The Refuge boundary extends from the low water mark seaward to 12 nautical miles (515,232 acres) and includes 16,094 acres of coral reef habitat and 680 acres of horseshoe-shaped emergent lands encompassing a central lagoon. Palmyra's terrestrial habitats support one of the largest remaining stands of *Pisonia* beach forest in the Pacific and several other native varieties of ferns and shrubs. The Atoll is also home to the world's largest land-based invertebrate, the coconut crab, so-named because of its ability to crack open a coconut with its huge claws. The second largest red-footed booby colony in the world is found on Palmyra, which also hosts significant populations of brown boobies, black noddies, sooty terns, red- and white-tailed tropicbirds, masked boobies, great frigatebirds, and white terns. More than 200 bristle-thighed curlews, a large shorebird whose worldwide population estimate is only 6,000 individuals, spend their winters on Palmyra. Palmyra Atoll's near-pristine reefs support three times the number of coral species found in Hawai'i and the Caribbean, and five times the number of species found in the Florida Keys. Marine wildlife includes pilot whales, bottle-nosed dolphins, hawksbill and green sea turtles, reef sharks, tiger sharks, manta rays, and giant clams. Management programs on Palmyra Atoll are primarily focused on invasive species management, conservation of the *Pisonia* forest, restoring altered lagoon hydrology, protecting seabird nesting colonies, and providing opportunities for the public to learn about wildlife resources through wildlife viewing, interpretation, and recreation.

Palmyra Atoll is managed cooperatively by the Service and The Nature Conservancy (TNC), which owns Cooper Island proper, within the NWR, including the airstrip. In a partnership with 10 academic institutions comprising the Palmyra Atoll Research Consortium (PARC), TNC owns and operates The Palmyra Atoll Research Station on Cooper Island. The PARC was established by TNC in 2003 to conduct integrative research and studies of biodiversity, ecosystem function, and environmental change at Palmyra Atoll and Kingman Reef NWRs. Proposed projects generally fall under one or more of three overarching themes: Marine Biodiversity, Terrestrial Interface, and Climate and Biogeochemistry.

Kingman Reef NWR lies 33 miles northwest of Palmyra. The first recorded western contact with Kingman Reef was by Captain Fanning, an American whaler, in 1798. The reef was also visited by its namesake, Captain W.E. Kingman, in the American ship Shooting Star, in 1853. In 1860, the United States Guano Company claimed Kingman Reef as a United States Territory under the Guano Islands Act of 1856, 48 U.S.C. 1411–1419. In 1934, President Franklin D. Roosevelt issued Executive Order No. 6935, which ''reserved [and] set aside'' Kingman Reef and placed it under the Secretary of the Navy's ''control and jurisdiction.'' In 1941, President Roosevelt issued a second executive order affecting Kingman Reef. Executive Order No. 8682 established and reserved several Naval Defense Sea Area and Naval Airspace Reservations over certain Pacific islands, including Kingman Reef. In 2000, the Navy identified its ''control over and administrative jurisdiction of Kingman Reef'' as ''excess'' to Department of Defense requirements, and transferred ''custody and accountability for Kingman Reef'' to the Department of the Interior. The Department of the Interior accepted this transfer, subject to the 1934 and 1941 Executive Orders, which remained in effect.

There are no terrestrial plants on Kingman Reef, which is frequently awash; however, its pristine coral reefs support abundant and diverse marine fauna and flora. Kingman Reef is one of the most pristine coral reef atoll ecosystems in the Pacific Ocean. In 2001, the waters surrounding the Reef out to 12 nautical miles were designated as the Kingman Reef National Wildlife Refuge. It is comprised of 486,699 submerged acres of crystal clear oceanic waters and vibrant coral reefs supporting a spectacular diversity of corals and other marine invertebrates, algae, fishes, marine mammals, sea turtles and migratory seabirds.

Preliminary Issues, Concerns, and Opportunities

We have identified a number of preliminary issues, concerns, and opportunities, which may warrant addressing in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

During the CCP planning process the Service will analyze methods for protecting the resources of the Palmyra Atoll NWR in the long term, while providing quality opportunities for wildlife-dependent recreation.

At the Palmyra Atoll and Kingman Reef NWRs, the Service will specifically evaluate the extensive inventory, monitoring, and research needs of these NWRs through the development of a RMP. Research strategies and objectives will be evaluated within the context of Refuge needs and priorities, and in the wider context of regional, national, and international conservation priorities. We will determine methods for prioritizing and accomplishing research needs in a RMP. We will also identify and consider research alternatives, strategies, actions, and partnerships to facilitate valuable research, while protecting sensitive and irreplaceable wildlife, habitat, and cultural resources found within the NWRs.

Public Meeting

A public open house meeting will be held on May 8, 2007, at 7:30 p.m. at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92001, to provide information on a CCP and RMP, and receive public comments. Opportunities for additional public input will be announced throughout the planning process.

Dated: April 17, 2007.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E7–8756 Filed 5–4–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Three-Year Pilot Program; Electronic Federal Migratory Bird Hunting and Conservation Stamps

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; call for applications.

SUMMARY: The Director of the U.S. Fish and Wildlife Service announces the opportunity for State fish and wildlife agencies to apply to participate in a 3-year pilot program to issue electronic Federal Migratory Hunting and Conservation Stamps. The program is expected to enhance the ability of the public to obtain required Federal Duck Stamps through the use of electronic technology, enhancing public participation and increasing the number of stamps sold.

DATES: The deadline for submittal of applications is close of business, June 8, 2007. The project period for the pilot program will be from September 1, 2007, through September 1, 2010.

ADDRESSES: Please submit your application and supplemental information in Word or text format via e-mail to: *Laurie_Shaffer@fws.gov.* Alternatively, you may hand deliver or mail a hard copy of the application and supplemental information to Laurie Shaffer, Federal Duck Stamp Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MS–70, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Laurie Shaffer, Federal Duck Stamp Office, 4501 North Fairfax Drive, Arlington, VA 22203; 703–358–2002 (phone). If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Federal Duck Stamp Office Mission

Federal Migratory Bird Hunting and Conservation Stamps, commonly known as ''Duck Stamps,'' are pictorial stamps produced by the U.S. Postal Service for the U.S. Fish and Wildlife Service. Not valid for postage, the stamps originated in 1934 as the Federal license required for all hunters over 16 years of age who wished to hunt migratory birds. (For the history of the Federal Duck Stamp Program, please see 71 FR 18697, April 12, 2006). Federal Duck Stamps have a much larger purpose today, however. Federal Duck Stamps are a vital tool for wetland conservation. Ninety-eight cents out of every dollar generated by the sales of Federal Duck Stamps goes directly to purchase or lease wetland habitat for protection in the National Wildlife Refuge System.

Action in This Notice

The Director takes this action under the Electronic Duck Stamp Act of 2005 (Pub. L. 109–266), which requires that the Secretary of the Interior conduct a 3-year pilot program, under which up to 15 States authorized by the Secretary may issue electronic Federal Duck Stamps. The number of participating State agencies accepted under this program will depend upon the number of compliant applications received.

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L.105–277) encourages us to undertake initiatives to improve our application processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these laws. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Eligible Applicants

There are currently 40 States that provide for sales of State hunting and fishing licenses by internet, point of sale, or telephone. The application process will lead to the selection of up to 15 eligible participants for this pilot program.

Eligible applicants are State fish and wildlife agencies that have an automated licensing system authorized under State law and are deemed by the Secretary as meeting the requirements of this application process. The proposed system for issuing the electronic Federal Duck Stamp must be compatible with the hunting licensing system of the State and described in the State application approved by the Secretary.

Requests for Applications and Other Information

The application and the procedures and requirements for completing it are available through the U.S. Fish and Wildlife Service's Federal Duck Stamp Office web page at *http://www.fws.gov/duckstamps.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. Individuals with disabilities may obtain a copy of this request for applications in an alternative format by contacting that person.

Fiscal Information

Congress did not enact an appropriation for this program. The Service is inviting applications for this pilot program with this understanding.

Randall B. Luthi,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–8692 Filed 5–4–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of proposed renewal of information collection.

SUMMARY: The Bureau of Indian Education (BIE), in accordance with the Paperwork Reduction Act, is planning to renew the No Child Left Behind Regulations, 25 CFR parts 36 and 47, OMB Control Number 1076–0164.

DATES: Submit comments on or before July 6, 2007 for best consideration.

ADDRESSES: Please send comments to Mr. Thomas M. Dowd, Director, Bureau of Indian Education, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240, facsimile number (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin, Chief, Division of Planning and Research, Bureau of Indian Education, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240, Telephone: (202) 208–6123, Facsimile: (202) 208–3312 or by e-mail at *jmartin1@bia.edu.*

SUPPLEMENTARY INFORMATION: Public Law 107–110, the No Child Left Behind

(NCLB) Act of January 8, 2001, requires all schools, including BIE-funded boarding/residential schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. In addition, the BIE is required by NCLB to implement national standards for home-living situations in all BIE-funded residential schools. The BIE is required to assess each residential school and submit a plan to the Congress, Tribes and schools which will bring all BIE-funded residential schools up to the national standards. Information from all BIE-funded residential schools must be collected in order to assess each school's progress in meeting the national standards. Finally, the BIE is required to monitor programs, gather data, and complete reports for the U.S. Department of Education. To achieve these results, residential schools must prepare reports, develop curriculum, prepare financial planning documents, and establish standards to measure student progress. The BIE uses the Annual Report to the Department of Education and three other information collections for the BIE to collect data, measuring each school's performance. When there is a lack of progress, the residential schools must show that they have developed school improvement, corrective action, or restructuring plans to address the problems of all students. Additional information collection requirements have been developed to implement the No Child Left Behind Act.

Request for Comments

The Bureau of Indian Education requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request and an individual need not respond to a collection of information unless it has a valid OMB Control Number. It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 5 p.m. EST, Monday through Friday, except legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0164.

Type of Review: Renewal.

Title: No Child Left Behind Regulations, 25 CFR parts 36 and 47.

Brief Description of Collection: This collection is mandatory according to statutory regulations, and the benefit to the respondents is continued supplementary program funding.

Respondents: Bureau-funded schools with residential programs, tribal governing bodies and school boards are the respondents, and submission is mandatory.

Number of Respondents: There are 66 schools with residential programs, of which 28 are Bureau-operated and 38 are tribally operated. Thus, the collection of information is necessary from 38 of the 66 residential schools.

Estimated Time per Response: The range of time can vary from .02 hour to an average of 20 hours per 1 item.

Frequency of Response: Annually and sometimes daily.

Total Annual Burden to Respondents: It is estimated that 20,793 (number of responses) × 20 (hourly burden per response) = 415,860 total annual hours of burden.

Dated: April 27, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–8657 Filed 5–4–07; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of proposed renewal of information collection.

SUMMARY: The Bureau of Indian Education (BIE), in accordance with the Paperwork Reduction Act, is proposing to renew the No Child Left Behind Act Regulations, 25 CFR parts 30, 37, 39, 42, 44 and 47, OMB Control Number 1076–0163.

DATES: Submit comments on or before July 6, 2007 for best consideration.

ADDRESSES: Please send comments to Mr. Thomas M. Dowd, Director, Bureau of Indian Education, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240, facsimile number (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin, Chief, Division of Planning and Research, Bureau of Indian Education, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240, Telephone: (202) 208–6123, Facsimile: (202) 208–3312 or by e-mail at *jmartin1@bia.edu*.

SUPPLEMENTARY INFORMATION: Public Law 107–110, the No Child Left Behind (NCLB) Act of January 8, 2001, requires all schools, including Bureau of Indian Education funded schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. The BIE is required to monitor programs, gather data, and complete reports for the U.S. Department of Education. To achieve these results, schools must prepare required documentation such as the Annual Report, the School Report Card, Section 1114 Plans, financial budgets, school improvement plans, compliance action plans as a result of monitoring, Title II, Part A reports on highly qualified staff, Title IV, Part A, Safe and Drug Free Schools and Communities reports, competitive sub-grant reports, Indian School Equalization Programs (ISEP) reports, the Native American Student Information System (NASIS) reports, and transportation reports.

Request for Comments

The Bureau of Indian Education requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request and an individual need not respond to a collection of information unless it has a valid OMB Control Number. It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 5 p.m. EST, Monday through Friday, except legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0163.

Type of review: Renewal.

Title: No Child Left Behind Regulations, 25 CFR parts 30, 37, 39, 42, 44, and 47.

Brief Description of collection: This collection is mandatory according to statutory regulations, and the benefit to the respondents is continued supplementary program funding.

Respondents: Bureau-funded schools, tribal governing bodies and school boards are the respondents, and submission is mandatory.

Number of Respondents: 184 Bureau-funded schools.

Estimated Time per Response: The range of time can vary from 1 hour to 48 hours for one item.

Frequency of Response: Annually and sometimes quarterly.

Total Annual Hourly Burden to Respondents: 706 (number of responses) × 30 (hourly burden per response) = 21,180 total annual hours of burden.

Dated: April 27, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–8659 Filed 5–4–07; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14889–A; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to MTNT, Ltd., Successor in Interest to Chamai, Incorporated. The lands are in the vicinity of McGrath, Alaska, and are located in:

Seward Meridian, Alaska

T. 31 N., R. 34 W., Sec. 4; Sec. 5, lots 1, 2, and 3; Sec. 6; Sec. 7, lots 1 and 2; Sec. 8, lots 1 and 2; Secs. 16 and 17; Sec. 18, lots 1, 2, and 3; Sec. 19, lots 1 and 2; Sec. 20, lots 1, 2, and 3; Secs. 21 and 28; Sec. 29, lots 1 and 2; Sec. 30, lots 1 and 2; Sec. 31, lot 1.

Containing 7,865.50 acres.

T. 32 N., R. 34 W., Sec. 21, lot 1; Sec. 22, lots 1 and 2; Sec. 26, lot 1; Sec. 33, lot 2; Sec. 34, lot 2.

Containing 1,684.13 acres.

T. 31 N., R. 35 W., Sec. 12, lot 2; Sec. 13, lots 1 and 3; Sec. 14, lot 2; Sec. 23, lot 1; Sec. 24, lot 1.

Containing 1,122.84 acres.
Aggregating 10,672.47 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to MTNT, Ltd., Successor in Interest to Chamai, Incorporated. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 6, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–8660 Filed 5–4–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, and Draft Wetlands Statement of Findings, Big Thicket National Preserve, TX

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Plan of Operations, Environmental Assessment, and draft Wetlands Statement of Findings for a 30-day public review at Big Thicket National Preserve.

SUMMARY: Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service (NPS) has received from Seismic Assistants, Ltd., a Plan of Operations to conduct the Knight Phase IV 3–D Seismic Survey within the Big Sandy Creek Corridor, Turkey Creek and Village Creek Corridor Units of Big Thicket National Preserve, in Hardin and Tyler Counties, Texas. The NPS has prepared an Environmental Assessment and a draft Wetlands Statement of Findings for this proposal.

DATES: The above documents are available for public review and comment through June 6, 2007.

ADDRESSES: The Plan of Operations, Environmental Assessment, and draft Wetlands Statement of Findings are available for public review and comment at *http://parkplanning.nps.gov* and in the Office of the Superintendent, Todd Brindle, Big Thicket National Preserve, 6044 FM 420, Kountze, Texas 77625. Copies of the documents are available upon request from the contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Haigler ''Dusty'' Pate, Oil and Gas Program Manager, Big Thicket National Preserve, 6044 FM 420, Kountze, Texas 77625, Telephone: 409 951–6822, e-mail at *Haigler_Pate@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to comment on the Plan of Operations, Environmental Assessment, and draft Wetlands Statement of Findings, you may mail comments to the name and address above or post

comments online at *http://parkplanning.nps.gov/*. The documents will be on public review for 30 days. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 7, 2007.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E7–8663 Filed 5–4–07; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Rosie the Riveter/World War II Home Front National Historical Park, Contra Costa County, CA; Notice of Termination of the Environmental Impact Statement

SUMMARY: The National Park Service is terminating preparation of an Environmental Impact Statement (EIS) for the General Management Plan, Rosie the Riveter/World War II Home Front National Historical Park, Richmond, California. A Notice of Intent to prepare the EIS for the General Management Plan (GMP) was published in the **Federal Register** on March 26, 2002. The National Park Service has since determined that an Environmental Assessment (EA) rather than an EIS is the appropriate environmental documentation for the GMP; this determination includes due consideration of all public comment and other agency information received during the public scoping period.

Background: The Rosie the Riveter/World War II Home Front National Historical Park includes the Ford Assembly Building, the Richmond Shipyard #3 (currently known as the Port of Richmond, Terminals 5, 6 and 7), the Maritime and Ruth Powers Child Development Centers, Atchison Village housing, Kaiser Field Hospital, Fire Station 67A, the Rosie the Riveter Memorial, the S.S. Red Oak Victory, and city parks referred to in the authorizing legislation as Shimada Peace Memorial Park, Westshore Park (now known as Lucretia Edwards Park), Sheridan Observation Point Park, Vincent Park, and the Bay Trail-Esplanade. The National Park Service (NPS) does not own or manage these sites, but is authorized to interpret the story of Rosie the Riveter and the World War II home front, conduct and maintain oral histories, operate an education center, provide visitor services, provide technical assistance, enter into agreements to support preservation and interpretation, and acquire certain structures from willing sellers. The NPS will collaborate with the public and private owners of these sites to plan for and encourage their preservation and use.

Pub. L. 106–352 requires the GMP to include a plan to preserve the historic setting of the Rosie the Riveter/World War II Home Front National Historical Park, which must be jointly developed and approved by the City of Richmond. Accordingly, the GMP will establish the overall direction for the park, setting a broad vision and management goals for managing this partnership park for the next 15 to 20 years. The plan was originally scoped as an EIS. No concerns or issues expressed during public scoping and preliminary development of the GMP convey either the potential for controversy or identify potential for significant impacts.

In the GMP effort to date the cooperating park partners and NPS planning team have developed three alternatives for the historical park. All three alternative visions support preserving the historic scene while providing different approaches for visitors to experience and learn about Rosie the Riveter and the American World War II Home Front. Initial analysis of the alternatives has revealed neither major effects nor significant or unacceptable impacts on the human environment, nor any potential for impairing park resources and values. Potential impacts as may arise from implementing any of the alternatives are expected to range from negligible to moderate in magnitude. All the GMP alternative visions provide for preserving the historic scene with the NPS providing technical assistance to help support the decisions and actions of the park partners. All uses expected to occur under any of the alternative visions are deemed to be appropriate. For these reasons the NPS determined the intensity of conservation planning and environmental impact analysis needed for the GMP is an EA.

SUPPLEMENTARY INFORMATION: The draft GMP and EA will be integrated; the combined document is expected to be distributed for a 60-day public review and comment period in the summer/fall of 2007. The NPS will notify the public by mail, Web site postings, local and regional media, and other means, to provide regularly updated information on where and how to obtain a copy of the EA, how to comment on the EA, and the confirmed dates for public meetings to be hosted in Richmond and Oakland during the 60-day public review period. For further information contact Martha Lee, Superintendent, Rosie the Riveter/World War II Home Front National Historical Park, 1401 Marina Way South, Richmond, CA 94804 (telephone: (510) 232–5050; e-mail: *Martha_lee@nps.gov*).

A decision regarding selection of an alternative vision for the new GMP is expected to be made in the fall/winter of 2007. The official responsible for the final decision is the Regional Director, Pacific West Region, National Park Service. Subsequently the official responsible for implementing the new GMP is the Superintendent, Rosie the Riveter/World War II Home Front National Historical Park.

Dated: March 28, 2007.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. E7–8648 Filed 5–4–07; 8:45 am]

BILLING CODE 4312–6A–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–561]

In the Matter of Certain Combination Motor and Transmission Systems and Devices Used Therein, and Products Containing the Same; Notice of Commission Decision to Review in Part and on Review to Modify a Final Initial Determination Finding No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's (''ALJ'') initial determination

(''ID'') finding no violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. **1337) with regard to the above-captioned investigation. On review, the Commission has determined to take no position on the ALJ's findings concerning the economic prong of the domestic industry requirement. Accordingly, the Commission has terminated the investigation with a finding of no violation of Section 337.

FOR FURTHER INFORMATION CONTACT: Christal A. Sheppard, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on February 7, 2006, based on a complaint filed by Solomon Technologies, Inc., of Tarpon Springs, Florida (''Solomon''). The complaint, as amended, alleged violations of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain combination motor and transmission systems and devices used therein, and products containing same by reason of infringement of claims 1–5, 7, 8, 10, and 12 of United States Patent No. 5,067,932 (''the '932 patent''). 71 FR 7574. Only claim 7 of the '932 patent was asserted against the respondents at the hearing. However, Solomon relied upon claim 1 of the patent-in-suit to meet the technical prong of the domestic industry requirement. The amended complaint named Toyota Motor Corporation of Japan; Toyota Motor Engineering & Manufacturing North America, Inc. of Erlanger, Kentucky; Toyota Motor Manufacturing Kentucky, Inc. of Georgetown, Kentucky; and Toyota Motor Sales, U.S.A., Inc., of Torrance, California as respondents.

On February 13, 2007, the ALJ issued an ID finding no violation of Section 337 with regard to respondents' products because he found claim 7 to be invalid and not infringed. Moreover, he found no domestic industry involving the asserted patent. Complainants and the Office of Unfair Import Investigations (''OUII'') each filed petitions for review on February 26, 2007. Respondents filed a joint reply on March 5, 2007. Also on March 5, 2007, OUII filed a response to Solomon's petition for review and Solomon filed a response to OUII's petition for review.

Having considered the petitions for review, the oppositions thereto, and the relevant portions of the record, the Commission has determined to review the ID in part. On review, the Commission has determined to take no position on the ALJ's findings concerning the economic prong of the domestic industry requirement. The remainder of the ID has become the Commission's final determination. *See* 19 CFR 210.42(h).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and sections 210.42(c) and (h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(c) and (h).

Issued: April 30, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8621 Filed 5–4–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Review)]

Folding Gift Boxes From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted this review on December 1, 2006 (71 FR 69586) and determined on March 6, 2007 that it would conduct an expedited review (72 FR 13512, March 22, 2007).

The Commission transmitted its determination in this review to the Secretary of Commerce on April 30, 2007. The views of the Commission are contained in USITC Publication 3917 (April 2007), entitled *Folding Gift Boxes From China:* Investigation No. 731–TA–921 (Review).

By order of the Commission.

Issued: May 1, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8623 Filed 5–4–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–602]

In the Matter of Certain GPS Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 2, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Global Locate, Inc. of San Jose, California. A letter supplementing the complaint was filed on April 18, 2007. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain GPS devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,417,801, 6,606,346, 6,651,000, 6,704,651, 6,937,187, and 7,158,080. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.)

in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on April 30, 2007, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain GPS devices or products containing same by reason of infringement of one or more of claims 1 and 17 of U.S. Patent No. 6,417,801; claims 1, 3–5, 8–17, 19–21, and 23 of U.S. Patent No. 6,606,346; claims 1–5, 9, 10, 11–14, 29–31, and 33 of U.S. Patent No. 6,651,000; claims 1 and 2 of U.S. Patent No. 6,704,651; claims 1 and 9 of U.S. Patent No. 6,937,187; and claims 1–3, 12, 15, 16, 19, 20, 22–24, 26, 28–31, and 33–35 of U.S. Patent No. 7,158,080, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Global Locate, Inc., 3190 South Bascom Avenue, San Jose, Califonia 95124.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

SiRF Technology, Inc., 217 Devcon Drive, San Jose, California 95112.

E–TEN Corp., No. 256, Yangguang Street, Neihu Chiu, Taipei, Taiwan 114, Taiwan.

Pharos Science & Applications, Inc., 411 Amapola Avenue, Torrance, California 90501.

MiTAC International Corporation, No. 200 Wen Hwa 2nd Road, Kuei Shan Hsiang, Taoyuan, Taiwan.

Mio Technology Limited, USA, 47988 Fremont Boulevard, Fremont, California 94538.

(c) The Commission investigative attorney, party to this investigation, is Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 30, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8624 Filed 5–4–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1089 (Final) (Remand)]

Certain Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its determination in the antidumping Investigation No. 731–TA–1089 concerning certain orange juice from Brazil. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

EFFECTIVE DATE: May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Debra Baker, Office of Investigations, telephone 202–205–3180, or David Goldfine, Office of General Counsel, telephone 202–708–5452, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record of Investigation No. 731–TA–1088 may be viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. In March 2006, the Commission determined that an industry in the United States was materially injured by reason of imports of certain orange juice from Brazil that were allegedly sold in the United States at less than fair value. The Commission's determination was appealed to the U.S. Court of International Trade, which issued an opinion in the matter on April 12, 2007. *See Tropicana Products, Inc.* v. *United States*, Slip Op. 07–55 (Ct. Int'l Trade April 12, 2007). In its opinion, the U.S. Court of International Trade remanded the matter to the Commission for further proceedings not inconsistent with that opinion.

Participation in the proceeding. Only those persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not make any additional appearance filings with the Commission to participate in the remand proceeding. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written submissions. The Commission is reopening the record for the limited purpose of collecting data pertinent to its analysis called for under *Bratsk Aluminum Smelter* v. *United States*, 444 F.3d 1369 and 1375 (Fed. Cir. 2006). In addition, the Commission will permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions, but no new factual information may be submitted with these comments. Comments should be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information and may not address any issue other than the inquiries that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than May 31, 2007.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: May 1, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8615 Filed 5–4–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–24]

U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on April 1, 2007, the Commission instituted investigation No. TA–2104–24, *U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects*, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)), for the purpose of assessing the likely impact of the U.S. Free Trade Agreement (FTA) with the Republic of Korea (Korea) on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

DATES:

April 1, 2007: Receipt of request.

May 24, 2007: Deadline for receipt of requests to appear at hearing.

May 24, 2007: Deadline for filing pre-hearing briefs and statements.

June 7, 2007, 9:30 a.m.: Public hearing.

June 21, 2007: Deadline for filing post-hearing briefs and statements and all other written submissions.

September 20, 2007: Anticipated date for transmitting report to USTR and the Congress.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW,, Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Project Leader Nannette Christ (202–205–3263; *nannette.christ@usitc.gov*) or Deputy Project Leader Queena Fan (202–205–3055; *queena.fan@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet address (*http://www.usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)–(3) of the Trade Act of 2002 assessing the likely impact of the U.S. FTA with Korea on the U.S. economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports, and imports; aggregate employment and employment opportunities; the production, employment, and competitive position of industries likely to be significantly affected by the agreement; and the interests of U.S. consumers. In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature concerning any substantially equivalent proposed agreement. The Commission will provide a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the Commission's analyses and conclusions and other economic assessments reviewed.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. On April 1, 2007, the President notified the Congress of his intent to enter into a FTA with Korea. The USTR requested that the Commission provide the report as soon as possible after the FTA is signed.

Public Hearing: A public hearing in connection with the investigation is scheduled to begin at 9:30 a.m. on June 7, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons shall have the right to appear, by counsel or

in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., May 24, 2007. Any pre-hearing briefs or statements should be filed no later than 5:15 p.m., May 24, 2007, and any post-hearing briefs or statements should be filed no later than 5:15 p.m., June 21, 2007; all such briefs and statements must be submitted in accordance with the requirements below under ''written submissions.'' In the event that, as of the close of business on May 24, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after May 24, 2007 for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m., June 21, 2007.

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission sends to the President and the Congress and makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: April 30, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8622 Filed 5–4–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–007]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 11, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 731–TA–1111–1113 (Preliminary) (Glycine from India, Japan, and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before May 14, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before May 21, 2007.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 30, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8625 Filed 5–4–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on March 21, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Disk Stream, Inc., Waterloo, Ontario, CANADA; Microsoft Corporation, Redmond, WA; and Virorum Consulting LLP, Brighton, East Sussex, UNITED KINGDOM have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, AAF Association Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 21, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2007 (72 FR 3414).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2227 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Body Development System

Notice is hereby given that, on March 19, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Digital Body Development System (''DBDS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identifies of the parties to the venture are: Altarum, Ann Arbor, MI; American Tooling Center, Madison Heights, MI; Atlas Tool, Inc., Roseville, MI; Center for Automotive Research, Ann Arbor, MI; CogniTens, Wixom, MI; Ford Motor Company, Dearborn, MI; General Motors, Warren, MI; Riviera Tool Company, Grand Rapids, MI; UGS PLM Solutions, Southfield, MI. The general area of DBDS's planned activity is to develop a decision support system that combines optical metrology, a finite element based assembly simulation engine, and intelligent agent based problem solving technology to enable the implementation of a virtual functional build methodology where designers and vehicle launch teams will be able to identify problems in assembly builds and make better problem solving decisions faster and understand the quality, cost, and timing impacts of those decisions.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2233 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on March 21, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Global Climate and Energy Project (''GCEP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the members of GCEP have, as of September 1, 2006, amended the agreement between them to extend the termination of the Project, which currently will terminate August 31, 2009.

No other changes have been made in either the membership or planned activity of the group research project, and GCEP intends to file additional written notification disclosing all changes in membership.

On March 12, 2003, GCEP filed the original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2003 (68 FR 16552).

The last notification was filed with the Department on April 24, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 2006 (71 FR 29353).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2229 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 16, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act o 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Apple Computer, Cupertino, CA; Cisco Systems, Inc., San Jose, CA; University Koblenz-Landau, Mainz, GERMANY; and Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH, Boston, MA have been added as parties to this venture. Also, Tribal Education Ltd., Sheffield, UNITED KINGDOM; WebCT, Lynnfield, MA; Centre for Research and Technology Hellas (CERTH), Thermi, Thessaloniki, GREECE; University of California-Berkeley, Berkeley, CA; Ufi Limited, Sheffield, UNITED KINGDOM; Massachusetts Institute of Technology, Cambridge, MA; Convergys, San Francisco, CA; and Stanford University, Stanford, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 26, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 2007 (72 FR 6577).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2228 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on March 8, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 17 new standards have

been initiated and 8 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/02–27–07.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on November 9, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2006 (71 FR 77061).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2226 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative

Notice is hereby given that, on March 19, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Industrial Technology Research Institute, Hsinchu, TAIWAN; Infineon Technologies Austria AG, Villach, AUSTRIA; and Semiconductor Technology Academic Research Center, Yokohama, JAPAN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on November 13, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 12, 2006 (71 FR 74559).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2232 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Cooperative Research Group on High Efficiency Dilute Gasoline Engine (HEDGE) (Formerly High Efficiency Durable Gasoline Engine)

Notice is hereby given that, on April 5, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project name. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, DAYCO Fluid Technologies, Torino, ITALY, Duetz, AG, Koeln, GERMANY, Dynagen Technologies, Inc., Sydney, Nova Scotia, CANADA, NGK Spark Plug Co., Ltd., Nagoya, JAPAN have been added as parties to the venture. In addition, the name of this venture has been changed to High Efficiency Dilute Gasoline Engine (HEDGE).

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group remains open, and SwRI intends to file additional written notifications disclosing all changes in membership.

On June 10, 2005, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 7, 2005 (70 FR 39339).

The last notification was filed with the Department on September 27, 2006. A notice was published in the **Federal Register** on November 22, 2006 (71 FR 67643).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2230 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Clean Diesel IV

Notice is hereby given that, on March 27, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') Clean Diesel IV has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chevron Energy Technology Co., San Ramon, CA, Hitachi, Ltd., Ibaraki-Ken, JAPAN, and PAS Peugeot Citroen, Cedex, FRANCE have become parties to the group research project. In addition, ArvinMeritor, Inc., Troy, MI, Norstar Founders Group, Ltd., Causeway Bay, HONG KONG–CHINA, and Senior Automotive, Bartlett, IL, are no longer parties to this group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI v intends to file additional written notifications disclosing all changes in membership.

On April 6, 2004, SwRI Clean Diesel IV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 10, 2004 (69 FR 25923).

The last notification was filed with the Department on June 28, 2005. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on July 13, 2005 (70 FR 40400).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–2231 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0025]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Bureau of Justice Assistance Application Form: *Claim for Death Benefits Form and Report of Public Safety Officer's Death Form.*

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 72, Number 41 page 9588 on March 2, 2007] allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until June 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, 1–866–859–2687.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Comments may also be submitted to M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street, NW., Washington, DC., 20531 via facsimile to (202) 305–1367.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection: Claim for Death Benefits Form and Report of Public Safety Officer's Death Form.*

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: OJP Form 1240/20. Payments and Benefits Division, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.*

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Dependents of public safety officers who were killed or permanently and totally disabled in the line of duty. Respondents who complete this application may be spouses, children, or parents of the public safety officer who was killed in the line of duty.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 275 respondents will complete the claim process in approximately 4 hours. Three hundred twenty ''Report of Public Safety Officer's Death'' forms are filed in association with the ''Claim for Death Benefit'' forms. This form is completed and submitted by the decedent's employing agency. It is estimated that it takes the employer 4 hours to complete the form and assemble supporting documentation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden hours associated with this application is 1,100.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: May 1, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–8638 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0024]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Bureau of Justice Assistance Application Form: *Public Safety Officers Disability Benefits.*

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 72, Number 41, page 9587–9588 on March 2, 2007] allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until June 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of

Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Comments may also be submitted to M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street, NW., Washington, DC. 20531 via facsimile to (202) 305–1367.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection: Public Safety Officers Disability Benefits*

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: OJP FORM 3650/7 Public Safety Officers Disability Benefits.*

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Dependents of public safety officers who were killed or permanently and totally disabled in the line of duty.

Abstract: The Public Safety Officers' Benefits Act of 1976 (PSOB), 42 U.S.C. 3796, authorizes the Bureau of Justice Assistance, Office of Justice Programs to pay a benefit to claimant public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic line of duty injury sustained on or after November 29, 1990. Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* It is estimated that no more than 75 respondents will apply a year. Each application takes approximately 120 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Total Annual Reporting Burden: 75 × 120 minutes per application = 9,000 minutes/by 60 minutes per hour = 150 hours.

If additional information is required, please contact, Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 1, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–8639 Filed 5–4–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The twelfth meeting of the Federal Economic Statistics Advisory Committee will be held on June 8, 2007 in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9 a.m. Opening session.
9:30 a.m. Improvements in Data for the Construction Industry.
1 p.m. Discussion of FESAC Working Group on Data Sharing.
1:30 p.m. Ethics for Special Government Employees.
2 p.m. Discussion of Priorities for Future Meetings.
2:45 p.m. Measures of Intangible Capital.
4:45 p.m. Conclude (approximate time).

The meeting is open to the public. Any questions concerning the meeting should be directed to Margaret Johnson, Federal Economic Statistics Advisory Committee, on Area Code (202) 691–5600. Individuals with disabilities, who need special accommodations, should contact Ms. Johnson at least two days prior to the meeting date.

Philip L. Rones,

Deputy Commissioner, Bureau of Labor Statistics.

[FR Doc. E7–8589 Filed 5–4–07; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Ventilation System Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance 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 of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. 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.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the compliance with standards (30 CFR 57.8520 and 57.8525). The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. A well planned mine ventilation system is necessary to assure a fresh air supply to miners at all working places, to control the amounts of harmful airborne

contaminants in the mine atmosphere, and to dilute possible accumulation of explosive gases. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and explosions due to a buildup of explosive gases.

DATES: Submit comments on or before July 6, 2007.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Ferraro.Debbie@dol.gov*, along with an original printed copy. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Underground mines present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. Inadequate ventilation can be a primary factor for deaths caused by disease of the lungs (e.g. silicosis). In addition, poor working conditions from lack of adequate ventilation contribute to accidents resulting from heat stress, limited visibility, or impaired judgment from contaminants.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Rules and Regs'' and ''**Federal Register** Documents.''

III. Current Actions

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to ventilation and main fan maintenance.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ventilation Plan and Main Fan Maintenance Record.

OMB Number: 1219–0016.

Affected Public: Business or other for-profit.

Frequency: Annually and on occasion.

Respondents: 242.

Total Burden Hours: 5,942.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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

Dated at Arlington, Virginia, this 1st day of May, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–8556 Filed 5–4–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hazardous Conditions Complaints

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance 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 of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. 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.

DATES: Submit comments on or before July 6, 2007.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk or via e-mail to *Ferraro.Debbie@dol.gov*, along with an original printed copy. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(g) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173, as amended by Pub. L. 95–164) (Mine Act), states that a representative of miners, or any individual miner where this is no miners representative, may submit a written or oral notification of alleged violation of the Mine Act or a mandatory standard or of an imminent danger. Such notification requires the Mine Safety and Health Administration (MSHA) to make an immediate inspection. A copy of the notice must be provided to the operator.

Title 30, Code of Federal Regulations (30 CFR), Part 43, implements Section 103(g) of the Mine Act. It provides the procedures for submitting notification of the alleged violation and the actions which MSHA must take after receiving the notice. Although the regulation contains a review procedure (required by Section 103(g)(2) of the Mine Act) whereby a miner or a representative of miners may in writing request a review if no citation or order is written as a result of the original notice, the option is so rarely used that it was not considered in the burden estimates.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Rules and Regs'' and ''Federal Register Documents.''

III. Current Actions

Currently, MSHA is soliciting comments concerning the extension of the information collection requirements related to 30 CFR 43.4 (Requirements for giving notice) and 43.7 (Informal review upon written notice given to an inspector on the mine premises).

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Hazardous Conditions Complaints.

OMB Number: 1219–0014.

Affected Public: Business or other for-profit.

Frequency: On Occasion.

Number of Respondents: 1,358.

Total Burden Hours: 272.

Total Burden Cost (operating/maintaining): $0.

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

Dated at Arlington, Virginia, this 1st day of May, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–8564 Filed 5–4–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (66).

Date/Time: May 30, 2007 1:30 p.m.–4:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235 via telecom.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Budget and Planning.

Summary Minutes: May be obtained from the contact person listed above.

Dated: May 2, 2007.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E7–8696 Filed 5–4–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: May 17, 2007, 12 p.m. to 2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 770, Arlington VA.

Type of Meeting: Open (Teleconference).

Contact Person: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230 (703) 292–8030.

Minutes: May be obtained from the contact person list above.

Reason for Late Notice: Due to scheduling conflicting schedules of members and the necessity to proceed.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities of the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Division of Arctic and Antarctic Sciences Committee of Visitors reports.

Dated: May 2, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–8697 Filed 5–4–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Monday, May 14, 2007, at 8 a.m. and Tuesday May 15, 2007 at 8:30 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

STATUS: Some portions open, some portions closed.

Open Sessions

May 14, 2007

8 a.m.–9 a.m.
9 a.m.–12:30 p.m.
1:30 p.m.–2:30 p.m.
2:30 p.m.–3:30 p.m.
4 p.m.–4:15 p.m.

May 15, 2007

8:30 a.m.–9:30 a.m.
9:30 a.m.–10:15 a.m.
10:30 a.m.–12 noon
2 p.m.–3 p.m.

Closed Sessions

May 14, 2007

3:30 a.m.–4 p.m.

May 15, 2007

10:15 a.m.–10:30 a.m.
1:30 p.m.–1:45 p.m.
1:45 p.m.–2 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, *rwebber@nsf.gov*, (703) 292–7000, *http://www.nsf.gov/nsb/*.

MATTERS TO BE DISCUSSED:

Monday May 14, 2007

CPP Subcommittee on Polar Issues

Open Session (8 a.m.—9 a.m.)

- Approval of March Minutes.
- SOPI Chairman's Remarks.
- OPP Director's Report.
- Measuring Ice Sheet Mass.
- A Circum-Arctic Observing Network.
- IceCube: Construction and Transition to Operations.

EHR Subcommittee on Science and Engineering Indicators

Open Session (9 a.m.—12:30 p.m.)

- Approval of March minutes.
- Subcommittee Chairman's Remarks.
- Review of Higher Education chapter: Chapter 2.
- Review of S&E Labor Force chapter: Chapter 3.
- Review of R&D: Funds and Technology Linkages chapter: Chapter 4.
- Review of Academic R&D chapter: Chapter 5.
- Review of Industry, Technology, and the Global Marketplace chapter: Chapter 6.
- Review of S&T: Public Attitudes and Understanding chapter: Chapter 7.
- Discussion of S&E Indicators 2010 Companion Piece Topics.
- Discussion of Key Findings and organization of Condensed Version (Digest) of Indicators.
- Chairman's summary.

CPP Task Force on International Science

Open Session (1:30 p.m.—2:30 p.m.)

- Approval of Minutes.
- Comments by the Task Force Chairman.
- Presentation on international accountability activities.
- Presentation on NSF Office of International Science and Engineering (OISE), activities.

Committee on Audit and Oversight

Open Session (2:30 p.m.—3:30 p.m.)

- Approval of Minutes of March 30, 2007 Meeting.
- Committee Chairman's Opening Remarks.
- OIG Semiannual Report.
- Management Response to OIG Semiannual Report.
- FY2007 Financial Statement Audit Status.
- Chief Financial Officer's Update.
- Chairman's Closing Remarks.

Closed Session (3:30 p.m.—4 p.m.)

- Pending Investigations.

Executive Committee

Open Session (4 p.m.—4:15 p.m.)

- Approval of Minutes for November 2006.
- Executive Committee Chairman's Remarks.
- Annual Report of the Executive Committee.
- Updates or New Business from Committee Members.

Tuesday, May 15, 2007

Committee on Programs and Plans

8:30 a.m.—9:30 a.m.

- Approval of March 29, 2007 CPP Minutes.
- Committee Chairman's Remarks.
- Status Reports:
  - Task Force on Transformative Research.
  - Task Force on International Science.
  - Subcommittee on Polar Issues.
- ad hoc Task Group on Sustainable Energy.
- Continuing Discussion: Request for Information on Recompetition, Operations and Management Costs for NSF Contracts, Cooperative Agreements and Grants.

Committee on Strategy and Budget

Open Session (9:30 a.m.—10:15 a.m.)

- Approval of March 29, 2007 CSB Minutes.
- Committee Chairman's Remarks.
- Discussion of CSB ad hoc Task Group on Cost-Sharing.
- Status of NSF Budget Request and Congressional Testimony.
- NSF Long Range Plan Overview.

Closed Session (10:15 a.m.—10:30 a.m.)

- Preliminary Discussion of FY 2009 Budget.

Committee on Education and Human Resources

Open Session (10:30 a.m.—12 p.m.)

- Approval of March 2007 Minutes.
- Committee Chairman's Remarks.
- Presentation on Report, Beyond Bias and Barriers.
- Discussion of the Board's Draft Action Plan for STEM Education.
- Subcommittee on Science and Engineering Indicators.
- NSF's Role in Supporting the Next Generation of High Ability Students.
- Executive Officer's Report.

Plenary Executive Closed

- Approval of March 2007 Minutes.
- Election of Executive Committee Members.

Plenary Closed

- Approval of March 2007 Minutes.
- Closed Committee Reports.

Plenary Open

- Approval of March 2007 Minutes.
- Resolution to Close August 2007 Meeting.
- Chairman's Report.
  - Calendar Year 2008 Board Meeting Dates.
- Director's Report.
  - NSF Congressional Update.
- Open Committee Reports.

Michael P. Crosby,

Executive Officer and Board Office Director.

[FR Doc. E7–8721 Filed 5–4–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 4, ''Cumulative Occupational Dose History'' and NRC Form 5, ''Occupational exposure record for a Monitoring Period''.

2. *Current OMB approval numbers:*

NRC Form 4 (3150–0005).
NRC form 5 (3150–0006).

3. *How often the collection is required: NRC Form 4: Occasionally; NRC Form 5:* Annually.

4. *Who is required or asked to report:* NRC licensees who are required to comply with 10 CFR Part 20.

5. *The number of annual respondents:* NRC Form 4: 218 (104 from reactor sites and 114 from materials licensees) and NRC Form 5: 3,994 (104 reactor sites and 114 materials licensees, plus an additional 3,176 materials licensees recordkeepers).

6. *The number of hours needed annually to complete the requirement or request:* An estimate of the total number of hours needed annually to complete the requirement or request: NRC Form 4: 10,012 hours on an average of 0.5 hours per response; NRC Form 5: 65,618 hours

(56,898 hours for recordkeeping on an average of 0.33 hours per record and 8,720 hours for reporting on an average of 40 hours per licensee).

7. *Abstract:* NRC Form 4 is used to record the summary of an individual's cumulative occupational radiation dose up to and including the current year to ensure that the dose does not exceed regulatory limits.

NRC Form 5 is used to record and report the results of individual monitoring for occupational radiation exposure during a one-year (calendar year) period to ensure regulatory compliance with annual radiation dose limits.

Submit, by July 6, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 30th day of April, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–8675 Filed 5–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its July 10, 2006, application for proposed amendment to Facility Operating License No. DPR–26 for Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications pertaining to spent fuel cask loading operations.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 29, 2006 (71 FR 51227). However, by letter dated April 11, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 10, 2006, and the licensee's letter dated April 11, 2007, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of May 2007.

For the Nuclear Regulatory Commission.

John P. Boska,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–8658 Filed 5–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29302; License No. 29–27857–01; EA–06–286]

In the Matter of TRC Engineers, Inc., Mount Laurel, NJ; Order Imposing Civil Monetary Penalty

I

TRC Engineers, Inc., formerly SITE-Blauvelt Engineering, Inc., formerly Site Engineers, Inc., is the holder of a byproduct materials License No. 29–27857–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on July 11, 1986. The license was renewed on December 26, 2001 (Amendment 7) and expires on December 31, 2011. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was completed on December 5, 2006 at the licensee's facility, as well as at a temporary job site in Monroe, Pennsylvania. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated January 30, 2007. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice in a letter dated February 28, 2007. In its response, the Licensee disputed the violation and requested rescission of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, the violation occurred as stated in the Notice and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that*:

The Licensee pay a civil penalty in the amount of $ 3,250 within 30 days of the date of this Order, in accordance with NUREG/

BR–0254. In addition, at the time payment is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Rd., King of Prussia, PA 19406. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.
Dated this 30th day of April 2007.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E7–8672 Filed 5–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Revised

The 179th Advisory Committee on Nuclear Waste (ACNW) meeting scheduled to be held on May 16–17, 2007, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Thursday, April 26, 2007 (72 FR 20889).

The discussion of the item on *Yucca Mountain Preclosure Repository Design: NRC Staff Review Readiness and Views on the Issues,* scheduled between 1 p.m. and 4 p.m. on Wednesday, May 16, 2007, is now scheduled between 1 p.m. and 3:30 p.m.

The discussion of the topic on *NCRP Study on Radiation Exposure of U.S. Population,* scheduled between 4 p.m.—6 p.m. on Wednesday, May 16, 2007 has been canceled. A discussion of *ACNW Letter Reports* will now take place between 3:45 p.m. and 5:30 p.m on Wednesday, May 16, 2007. All the other items remain the same as previously published in the **Federal Register** on Thursday, April 26, 2007 (72 FR 20889).

For further information, contact Mr. Antonio L. Dias, (Telephone 301–415–6805), between 6:45 a.m. and 4:30 p.m., ET.

Dated: May 1, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–8676 Filed 5–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–07–086]

In the Matter of Certain Fuel Cycle Licensees and All Other Persons Who Seek or Obtain Authorized Unescorted Access to Radioactive Material or Other Property Described Herein; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material or Other Property (Effective Immediately)

I

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC), authorizing them to possess radioactive materials. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, and which the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this particular requirement by Order, in part, prior to the completion of the rulemaking because a deliberate malevolent act by an individual with unescorted access to radioactive material or other property has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have an active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Also, individuals who have been fingerprinted and granted access to SGI by the reviewing official under the previous fingerprinting order, ''Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information,'' do not need to be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Additional Security Measures (ASMs) or Interim Compensatory Measures (ICMs) for certain radioactive material. The requirements imposed by these Orders and the measures licensees have developed to comply with that Order, were designated by the NRC as Safeguards Information (SGI) and were not released to the public. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals seeking unescorted access to

radioactive material or other property. ''Access'' means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, for all individuals allowed unescorted access to protected areas, secure areas, and other areas, as applicable, as set forth in the Order, for the Licensees identified in Attachment 1 to this Order. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

II

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 40, 10 CFR Part 70 and 10 CFR Part 73, *It is hereby ordered,* effective immediately, that all licensees identified in attachment 1 and all other persons who seek or obtain unescorted access to radioactive material or other property described herein shall comply with the requirements set forth in this Order.

A. All Licensee identified in Attachment 1 to this Order shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order, for unescorted access to radioactive material or other property.

B. All Licensees identified in Attachment 1 to this Order shall, in writing, within twenty (20) days from the date of this Order, notify the Commission: (1) Of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from, or variation of, any specific requirement.

C. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' only an NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive material or other property. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official, under the NRC's ''Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information'' do not need to be fingerprinted again for purposes of authorizing unescorted access. No person may have access to SGI or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to radioactive material or property subject to regulation by the NRC.

E. The Licensee may allow any individual who currently has unescorted access to radioactive material or other property, in accordance with the ASM or ICM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to radioactive material or other property. The Licensee shall complete implementation of the requirements of Attachment 2 to this Order within ninety (90) days from the date of issuance of this Order.

Licensee responses to Condition B. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as ''Security-Related Information—withhold under 10 CRF 2.390'', or as ''Official Use Only—Department of Energy,'' as applicable.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

III

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order, may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time to either submit an answer or request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law for which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to the Licensee, if the answer or hearing request is by an individual other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101 or via e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this

Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or an individual whose interest is adversely affected, the Commission will issue an Order designating the time and place of a hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. an answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 30th day of April 2007.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1: List of Applicable Licensees

License No. SNM–1168, Docket No. 70–1201, AREVA NP, Inc., Lynchburg, VA.

License No. SNM–1227, Docket No. 70–1257, AREVA NP, Inc., Richland, WA.

License No. SNM–42, Docket No. 70–27, BWXT Technologies, Inc., Lynchburg, VA.

License No. SNM–1097, Docket No. 70–1113, Global Nuclear Fuel—Americas, LLC, Wilmington, NC.

License No. SUB–526, Docket No. 40–3392, Honeywell International, Inc., Metropolis, IL.

License No. SNM–2010, Docket No. 70–3103, Louisiana Energy Services, L.P. (LES), Lea County, New Mexico.

License No. SNM–124, Docket No. 70–143, Nuclear Fuel Services, Erwin, TN.

License No. SNM–1107, Docket No. 70–1151, Westinghouse Electric Company LLC, Columbia, SC.

Attachment 2: Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to Radioactive Material or Other Property

General Requirements

Licensees shall comply with the following requirements of this Attachment.

1. Each Licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to radioactive material or other property. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this Attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this Attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (*e.g.*, a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61 for unescorted access, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history records check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to radioactive material or other property associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The Licensee's Reviewing Official shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ASM or ICM Security Orders, in making a determination whether to grant, or continue to allow, unescorted access to radioactive material or other property.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the radioactive material or other property.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the radioactive material or other property.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive material or other property solely on information received from the FBI involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history records check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to radioactive material or other property, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or via e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint

submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting Licensee, all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available, to the individual, the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination for unescorted access to radioactive material or other property based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to radioactive material or other property, the Licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to radioactive material or other property shall not be granted to an individual.

Protection of Information

1. Each Licensee who obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the radioactive material or other property. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to redisseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to radioactive material or other property. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

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NUCLEAR REGULATORY COMMISSION

[EA–07–087]

In the Matter of Certificate Holders and All Other Persons Who Seek or Obtain Authorized Unescorted Access to Radioactive Material or Other Property Described Herein; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material or Other Property (Effective Immediately)

I

The Certificate Holders identified in Attachment 1 to this Order hold certificates issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC), authorizing them to possess radioactive material. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, and which the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking, because a deliberate malevolent act by an individual with unescorted access to radioactive material or other property has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 **Federal Register** 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have an active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Additional Security Measures (ASMs) or Interim Compensatory Measures (ICMs) for certain radioactive material. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals needing unescorted access to radioactive material or other property. ''Access'' means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, for all individuals allowed unescorted access to protected areas, secure areas, and other areas, as applicable, as set forth in the Order, for the Certificate Holders identified in Attachment 1 to this Order. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

II

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 73 and 10 CFR Part 76, *it is hereby ordered,* effective immediately, that all certificate holders identified in attachment 1 and all other persons who seek or obtain unescorted access to radioactive material or other property described herein shall comply with the requirements set forth in this Order.

A. All Certificate Holders identified in Attachment 1 to this Order shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order, for unescorted access to radioactive material or other property.

B. All Certificate Holders identified in Attachment 1 to this Order shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) Individual who: (1) The Certificate Holder nominates as the ''reviewing official'' for determining unescorted access to radioactive material or other property by other individuals; and (2) has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 3 to this Order. The NRC will determine whether this individual (or any subsequent reviewing official) may have unescorted access to radioactive material or other property, and therefore, will be permitted to serve as the Certificate Holder's reviewing official.[1]

C. All Certificate Holders identified in Attachment 1 to this Order shall, in writing, within twenty (20) days from the date of this Order, notify the Commission: (1) Of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide the Certificate Holder's justification for seeking relief from, or variation of, any specific requirement.

D. Only a NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive material or other property. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to the Certificate Holder's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

E. Fingerprints shall be submitted and the results of the FBI criminal history records check be reviewed in accordance with the procedures described in Attachment 2 to this Order. No person may have access to Safeguards Information or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to radioactive material or property subject to regulation by NRC.

F. The Certificate Holder may allow any individual who currently has unescorted access to radioactive material or other property, in accordance with the ASM or ICM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to radioactive material or other property. The Certificate Holder shall complete implementation of the requirements of Attachment 2 to this Order within ninety (90) days from the date of issuance of this Order.

Certificate Holder responses to Condition B. and C. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Certificate Holder responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Certificate Holder.

III

In accordance with 10 CFR 2.202, the Certificate Holder must, and any other person adversely affected by this Order, may submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law for which the Certificate Holder or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to the Certificatee, if the answer or hearing request is by an individual other than the Certificatee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Certificate Holder requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Certificate Holder or an individual whose interest is adversely affected, the

[1] The NRC's determination of this individual's unescorted access to radioactive material or other property, in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

Commission will issue an Order designating the time and place of a hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Certificate Holder may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III, shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 30th day of April 2007.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material, Safety and Safeguards.

Attachment 1—List of Applicable Certificate Holders

Certificate No. GDP–0001
Docket No.: 70–7001
USEC—Paducah

Certificate No. GDP–0002
Docket No.: 70–7002
USEC—Portsmouth

Attachment 2—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to Radioactive Material or Other Property

Licensees shall comply with the following requirements of this Attachment.

1. Each Licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to radioactive material or other property. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this Attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this Attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61 for unescorted access, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history records check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to radioactive material or other property associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The Licensee's Reviewing Official shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ASM or ICM Security Orders, in making a determination whether to grant, or continue to allow, unescorted access to radioactive material or other property.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the radioactive material or other property.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the radioactive material or other property.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive material or other property solely on information received from the FBI involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history records check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to radioactive material or other property, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or via e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting Licensee, all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available, to the individual, the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual

challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination for unescorted access to radioactive material or other property based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to radioactive material or other property, the Licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to radioactive material or other property shall not be granted to an individual.

Protection of Information

1. Each Licensee who obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the radioactive material or other property. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to redisseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to radioactive material or other property. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

Attachment 3—Trustworthiness and Reliability Requirements

In order to ensure the safe handling, use, and control radioactive material or other property, each licensee shall control and limit access to radioactive material or other property to those individuals who have established the need-to-know, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that the individuals that are granted unescorted access to radioactive material or other property are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent activities.

The Licensee shall comply with the requirements of this Attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

[FR Doc. E7–8762 Filed 5–4–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27812; 812–13340]

First Trust Exchange-Traded Fund, et al.; Notice of Application

April 30, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The applicants request an order to permit certain management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies registered under the Act that are outside the same group of investment companies.

APPLICANTS: First Trust Exchange-Traded Fund (''Initial Trust''), First Trust Exchange-Traded Fund II (''Trust II''), and First Trust Exchange-Traded AlphaDEX Fund (''AlphaDEX Trust'') (collectively, the ''Existing Trusts''), First Trust Advisors L.P. (the ''Advisor'') and First Trust Portfolios L.P. (the ''Distributor'').

FILING DATES: The application was filed on November 7, 2006, and amended on April 27, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 29, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Existing Trusts, Massachusetts business trusts, are each an open-end

management investment company registered under the Act and organized as a series fund.[1] The Initial Trust currently has twelve series. Trust II and the AlphaDEX Trust currently do not have series. The Existing Trusts and their series operate as exchange-traded funds that redeem their shares in large aggregations (''Creation Units'') in reliance on an order previously granted by the Commission (''ETF Order'').[2] The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor or an entity controlling, controlled by or under common control with the Advisor will serve as investment adviser to the Index Funds. The Advisor may enter into sub-advisory agreements with sub-advisors with respect to particular Index Funds (each, a ''Sub-Advisor''). The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicants request relief to: (a) Permit management investment companies or series thereof (''Investing Management Companies'') and unit investment trusts or series thereof (''Investing Trusts'' and, together with Investing Management Companies, ''Investing Funds'') registered under the Act, that are not part of the same group of investment companies as an Index Fund within the meaning of section 12(d)(1)(G)(ii) of the Act, to acquire, and such Index Fund to sell, shares of such Index Fund beyond the limits of sections 12(d)(1)(A) and (B) of the Act; (b) permit principal underwriters, and any other brokers or dealers (''Brokers'') to sell shares of any Index Fund to an Investing Fund in excess of the limits prescribed by section 12(d)(1)(B) of the Act; and (c) exempt such transactions from section 17(a) of the Act.[3]

3. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (''Investing Fund Adviser'') and may be advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Investing Fund Subadviser''). Any Investing Fund Adviser or Investing Fund Subadviser will be registered as an investment adviser under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

4. Applicants state that the Index Funds will offer the Investing Funds simple and efficient vehicles to achieve their asset allocation or diversification objectives. Applicants state that the Index Funds will also provide high quality and low cost professional investment program alternatives to Investing Funds that do not have sufficient assets to operate a comparable fund.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Investing Funds to acquire shares of the Index Funds in excess of the limits in section 12(d)(1)(A) of the Act, and an Index Fund, any principal underwriter for an Index Fund and any Broker to sell shares of an Index Fund to an Investing Fund in excess of the limits of section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B) of the Act, which include concerns about large scale redemptions of the acquired fund's shares, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither the Investing Fund nor an Investing Fund Affiliate would be able to exert undue influence over the Index Funds.[4] To limit the control that an Investing Fund may have over an Index Fund, applicants propose a condition prohibiting the Investing Fund Adviser or Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund Adviser/ Sponsor Group'') from controlling (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Subadviser, any person controlling, controlled by or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Index Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of

[1] Applicants request that the order also extend to any other existing and future series of the Existing Trusts and any other registered open-end management investment companies and their series that may be created in the future and are part of the same group of investment companies within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Existing Trusts (together with the Existing Trusts, if they have no series, and any series of an Existing Trust, the ''Index Funds'').

[2] *In the matter of First Trust Exchange-Traded Fund, et al.*, Investment Company Act Release Nos. 27051 (August 26, 2005) (notice) and 27068 (September 20, 2005) (order).

[3] All Index Funds that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in the Index Funds and not in any other registered investment company.

[4] An ''Investing Fund Affiliate'' is an Investing Fund Adviser, Investing Fund Subadviser, Sponsor, promoter, or principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. An ''Index Fund Affiliate'' is an investment adviser, investment subadviser, promoter, or principal underwriter of an Index Fund, and any person controlling, controlled by, or under common control with any of those entities.

which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadviser, Sponsor, or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, Sponsor or employee is an affiliated person. An Underwriting Affiliate does not include a person whose relationship to an Index Fund is covered by section 10(f) of the Act.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Disinterested Trustees''), will find that the advisory fees charged under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. In addition, an Investing Fund Adviser, or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12b–1 under the Act) received by the Investing Fund Adviser or trustee or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor from the Index Funds in connection with the investment by the Investment Management Company or Investing Trust in the Index Fund. Applicants state that any sales loads or service fees charged with respect to shares of the Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rules'').

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Index Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by rule 12d1–1 under the Act or an exemptive order that allows the Index Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Before an Investing Fund invests in an Index Fund beyond the limits of section 12(d)(1)(A)(i) of the Act, a participation agreement will be entered into between the Index Fund and the Investing Fund (''Participation Agreement''). The Participation Agreement will require the Investing Fund to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the requested order only to invest in the Index Funds and not in any other registered investment company. Applicants represent that each Investing Fund will represent in the Participation Agreement that if it exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) and (iii) of the Act, it will disclose in its prospectus that it may invest in the Index Funds, and disclose in ''plain English'' in its prospectus the unique characteristics of doing so, including but not limited to, the expense structure and any additional expenses of investing in the Index Funds. Each Investing Fund will also be required to represent in the Participation Agreement that it will comply with the disclosure requirements set forth in Investment Company Act Release No. 27399 (June 20, 2006).

7. Applicants also note that an Index Fund may choose to reject a direct purchase by an Investing Fund. To the extent that an Investing Fund purchases shares of an Index Fund in the secondary market, the Index Fund would still retain its ability to reject purchases of its shares through its decision to enter into the Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A)(i).

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit an Index Fund that is an affiliated person of an Investing Fund because the Investing Fund holds 5% or more of the Index Fund's shares to sell its shares to and redeem its shares from an Investing Fund.[5] Applicants believe that any proposed transactions directly between an Index Fund and an Investing Fund will be consistent with the policies of each Index Fund and Investing Fund. The Participation Agreement will require any Investing Fund that purchases shares from an Index Fund to represent that the purchase of shares from the Index Fund by the Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Funds' registration statement.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that: (i) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of shares directly from an Index Fund will be based on the net asset value of the Index Fund. Applicants state that the

[5] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of shares of an Index Fund or (b) an affiliated person of an Index Fund, or an affiliated person of such person, for the sale by the Index Fund of its shares to an Investing Fund is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

[6] To the extent that purchases and sales of shares of an Index Fund occur in the secondary market and not through principal transactions directly between an Investing Fund and an Index Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of shares in Creation Units by an Index Fund to an Investing Fund and redemptions of those shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions, as described in the application for the ETF Order.

proposed transactions will be consistent with the policies of each Index Fund and Investing Fund and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of the Investing Fund Adviser/Sponsor Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Index Fund, the Investing Fund Adviser/Sponsor Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Index Fund, it will vote its shares of the Index Fund in the same proportion as the vote of all other holders of the Index Fund's shares. This condition does not apply to the Subadviser Group with respect to an Index Fund for which the Investing Fund Subadviser or a person controlling, controlled by, or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in an Index Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Index Fund or Index Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an Index Fund or an Index Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of an Index Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Index Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Index Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Index Fund; (b) is within the range of consideration that the Index Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Index Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in any Affiliated Underwriting.

6. The board of trustees of the Index Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by an Index Fund in an Affiliated Underwriting once an investment by an Investing Fund in Shares of the Index Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Index Fund. The board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Index Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Index Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Index Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the Shares of the Index Fund exceeds the limit in section 12(d)(1)(A)(i) setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to investing in an Index Fund in excess of the limits in section 12(d)(1)(A)(i), each Investing Fund and the Index Fund will execute a Participation Agreement stating, without limitation, that their boards of directors/trustees and their investment advisers, or their Sponsors and trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Index Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Index Fund of the investment. At such time, the Investing Fund will also transmit to the Index Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Index Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Index Fund and the Investing Fund will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors/trustees of each Investing Management Company, including a majority of the Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

10. An Investing Fund Adviser, or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it

by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12–1 under the Act) received from an Index Fund by the Investing Fund Adviser, trustee, or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, trustee or Sponsor or an affiliated person of the Investing Fund Adviser, trustee or Sponsor by the Index Fund, in connection with the investment by the Investing Management Company or Investing Trust in the Index Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an Index Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Index Fund in connection with the investment by the Investing Management Company in the Index Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

12. No Index Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by rule 12d1–1 under the Act or an exemptive order that allows the Index Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8595 Filed 5–4–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27815; 812–13312]

Hercules Technology Growth Capital, Inc.; Notice of Application

May 2, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act authorizing certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF THE APPLICATION: Applicant, Hercules Technology Growth Capital, Inc. (''HTGC'') requests an order to permit it to issue shares of its restricted common stock as part of the compensation packages for certain of its employees and directors, and certain employees of its wholly-owned consolidated subsidiaries.

FILING DATES: The application was filed on July 7, 2006 and amended on April 4, 2007 and May 1, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving HTGC with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2007, and should be accompanied by proof of service on HTGC, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. HTGC, c/o Manuel A. Henriquez, Chairman of the Board and Chief Executive Officer, HTGC, 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. HTGC, a Maryland corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] HTGC is a specialty finance company that provides debt and equity growth capital to technology-related and life-science companies at all stages of development. Shares of HTGC's common stock are traded on The NASDAQ Global Market under the symbol ''HTGC.'' As of December 31, 2006, there were 21,927,034 shares of HTGC's common stock outstanding. As of that date, HTGC had 26 employees, including the employees of its wholly-owned consolidated subsidiaries.

2. HTGC currently has a four member board of directors (''Board'') of whom one is considered to be an ''interested person'' of HTGC within the meaning of section 2(a)(19) of the Act and three are not-interested persons (''Non-interested Directors''). HTGC has three directors who are not officers of employees of HTGC (the ''Non-employee Directors''). Currently, HTGC's Non-employee Directors are all Non-interested Directors, but it is possible that HTGC may have Non-employee Directors in the future who are interested persons of HTGC.

3. In May, 2006, HTGC adopted the 2006 Non-employee Director Plan (the ''2006 Plan'') for the purpose of advancing the interests of HTGC by providing for the grant of awards under the 2006 Plan to eligible directors of HTGC who are Non-employee Directors.[2] HTGC proposes to amend

[1] HTGC was organized on December 18, 2003. On February 22, 2005, HTGC filed with the Commission its registration statement on Form N–2 under the Securities Act of 1933, as amended, in connection with its initial public offering of common stock (the ''IPO'') and elected to be regulated as a BDC on the same date. Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. On June 11, 2005, HTGC completed its IPO.

[2] The Commission has issued an order under Section 61(a)(3)(B) of the Act approving the 2006 Plan and the grant of options to Non-employee Directors under the 2006 Plan. Hercules Technology Growth Capital, Inc., Investment Company Act Release Nos. 27668 (Jan. 19, 2007) (notice) and 27669 (Feb. 15, 2007) (order).

and restate the 2006 Plan to permit the issuance of restricted stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed (the ''Restricted Stock'') to its Non-employee Directors (the ''Amended and Restated 2006 Plan'').

4. In May, 2006, HTGC adopted the Amended and Restated 2004 Equity Incentive Plan (the ''2004 Plan'') for the purpose of attracting and retaining the services of executive officers, employee directors, and other key employees. HTGC proposes to amend and restate the 2004 Plan to permit the issuance of shares of Restricted Stock to its employees and the employees of its wholly-owned consolidated subsidiaries (the ''Amended and Restated 2004 Plan''; each of the Amended and Restated 2004 Plan and the Amended and Restated 2006 Plan is an ''Amended and Restated Plan'' and together, the ''Amended and Restated Plans'').

5. HTGC requests an order to permit it to issue shares of Restricted Stock to its Non-employee Directors and employees, and the employees of its wholly-owned consolidated subsidiaries (collectively, the ''Restricted Stock Participants'' and each, a ''Restricted Stock Participant'').[3] HTGC believes that the Amended and Restated Plans would enable HTGC to offer the Restricted Stock Participants compensation packages that are competitive with those offered by its competitors and other investment management businesses, which would enhance the ability of HTGC to hire and retain key senior management and other key personnel.

6. The Amended and Restated Plans will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment or service on the Board, as the case may be (lapsing either on an annual or other periodic basis or on a ''cliff'' basis, *i.e.*, at the end of a stated period of time), the performance of HTGC, or other restrictions deemed by the Board from time to time to be appropriate and in the best interests of HTGC and its stockholders. The Restricted Stock will not be transferable except for disposition by gift, will or intestacy. Except to the extent restricted under the terms of an Amended and Restated Plan, a Restricted Stock Participant granted Restricted Stock will have all the rights of any other stockholder, including the right to vote the Restricted Stock and the right to receive dividends. During the restriction period (*i.e.*, prior to the lapse of applicable forfeiture restrictions), the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Restricted Stock Participant. Except as the Board otherwise determines, upon termination of a Restricted Stock Participant's employment or service on the Board during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

7. The maximum amount of shares that may be issued under the Amended and Restated Plan will be 10% of the outstanding shares of common stock of HTGC on the effective date of the Amended and Restated Plans plus 10% of the outstanding number of shares of HTGC's common stock issued or delivered by HTGC (other than pursuant to compensation plans) during the term of the Amended and Restated Plans.[4] In addition, no Restricted Stock Participant may be granted more than 25% of the shares of common stock reserved for issuance under the Amended and Restated Plans. The Board would award shares of Restricted Stock to the Restricted Stock Participants from time to time as part of the Restricted Stock Participant's compensation based on a Restricted Stock Participant's actual or expected performance and value to HTGC. The Board would have the responsibility to ensure that the Amended and Restated Plans are operated in a manner that best serves the interests of HTGC and its stockholders.

8. Subject to HTGC's stockholders' approval of the Amended and Restated 2006 Plan and issuance of the order, the Amended and Restated 2006 Plan will provide for the grant of 3,333 shares of Restricted Stock to Non-employee Directors upon their initial election to the Board, for which forfeiture restrictions would lapse as to one-half of such shares on the anniversary of the grant for each of the first two years of service, and an additional grant of 5,000 shares of Restricted Stock at the time of such Non-employee Directors' re-election to the Board, for which forfeiture restrictions would lapse as to one-third of such shares on the anniversary of such grant over three years. Subject to HTGC's stockholders' approval of the Amended and Restated 2006 Plan, Non-employee Directors who hold office on the date of the order will receive a grant at the 2007 annual meeting of HTGC's stockholders equal to the pro rata portion of such grant of 5,000 shares of Restricted Stock based on the length of the Non-employee Directors' remaining current term, for which forfeiture restrictions would lapse as to one-third of such shares on the anniversary of the grant over three years. The grants of Restricted Stock to Non-employee Directors under the Amended and Restated 2006 Plan will be automatic and will not be changed without Commission approval.

9. Each issuance of Restricted Stock under the Amended and Restated 2004 Plan will be approved by the required majority, as defined in Section 57(o) of the Act,[5] of HTGC's directors on the basis that the issuance is in the best interests of HTGC and its stockholders. The date on which the required majority approves an issuance of Restricted Stock will be deemed the date on which the subject Restricted Stock is granted. The Amended and Restated Plans will be submitted for approval to HTGC's stockholders, and will become effective upon such approval, subject to the issuance of the order.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Amended and Restated Plans.

2. Section 23(b) generally prohibits a closed-end management investment company from selling its common stock at a price below its current net asset value (''NAV''). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Amended and Restated Plans would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

[3] HTGC requests that the order also permit the issuance of Restricted Stock to its future Non-employee Directors under the Amended and Restated 2006 Plan and to its future employees and the future employees of its wholly-owned consolidated subsidiaries under the Amended and Restated 2004 Plan.

[4] For purposes of calculating compliance with this limit, HTGC will count as Restricted Stock all shares of HTGC's common stock that are issued pursuant to the Amended and Restated Plans less any shares that are forfeited back to HTGC and cancelled as a result of forfeiture restrictions not lapsing.

[5] The term ''required majority,'' when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

3. Section 6(c) provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. HTGC requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act. HTGC states that the concerns underlying those sections include: (i) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (ii) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (iii) dilution of stockholders' equity in the investment company. HTGC states that the Amended and Restated Plans do not raise the concern about preferential treatment of HTGC's insiders because the Amended and Restated Plans are bona fide compensation plans of the type that are common among corporations generally. In addition, section 61(a)(3) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. HTGC states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. HTGC states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. HTGC also asserts that the Amended and Restated Plans would not become a means for insiders to obtain control of HTGC because the maximum number of HTGC's voting securities that are represented by shares of Restricted Stock and that may be issued to an individual Restricted Stock Participant will be limited as set forth in the conditions to the order.

5. HTGC further states that the Amended and Restated Plans will not unduly complicate HTGC's structure because equity-based employee compensation arrangements are widely used among corporations and commonly known to investors. HTGC notes that the Amended and Restated Plans will be submitted to HTGC's stockholders for their approval. HTGC represents that a concise, ''plain English'' description of the Amended and Restated Plans, including their potential dilutive effect, will be provided in the proxy materials that will be submitted to HTGC's stockholders. HTGC also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934. HTGC further notes that the Amended and Restated Plans will be disclosed to investors in accordance with the requirements of the Form N–2 registration statements for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, HTGC is subject to the same executive disclosure requirements that the Commission has adopted for operating companies.[6] HTGC thus concludes that the Amended and Restated Plans will be adequately disclosed to investors and appropriately reflected in the market value of HTGC's shares.

6. HTGC acknowledges that, while awards granted under the Amended and Restated Plans would have a dilutive effect on the stockholders' equity in HTGC, that effect would be outweighed by the anticipated benefits of the Amended and Restated Plans to HTGC and its stockholders. HTGC asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, HTGC suggests, in turn are likely to increase HTGC's performance and stockholder value. HTGC also asserts that equity-based compensation would more closely align the interests of the Non-employee Directors and HTGC's employees with those of HTGC's stockholders. HTGC believes that the granting of shares of Restricted Stock to Non-employee Directors under the Amended and Restated 2006 Plan is fair and reasonable because of the skills and experience that such directors provide to HTGC. Such skills and experience are necessary for the management and oversight of HTGC's investments and operations. HTGC believes that granting the shares of Restricted Stock will provide significant incentives for Non-employee Directors to remain on the Board and to devote their best efforts to the success of HTGC's business in the future, as they have done in the past. The issuance of shares of Restricted Stock will also provide a means for HTGC's Non-employee Directors to increase their ownership interest in HTGC, thereby helping to ensure a close identification of their interests with those of HTGC and its stockholders.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) (''57(b) persons''), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a ''joint enterprise or other joint arrangement or profit-sharing plan,'' which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

8. HTGC requests an order pursuant to section 57(a)(4) and rule 17d–1 to permit the Amended and Restated Plans. HTGC states that the Amended and Restated Plans, although benefiting the Restricted Stock Participants and HTGC in different ways, are in the interests of HTGC's stockholders because the Amended and Restated Plans will help HTGC attract and retain talented professionals, help align the interests of HTGC's employees with those of its stockholders, and in turn help produce a better return to HTGC's stockholders.

Applicant's Conditions

HTGC agrees that the order granting the requested relief will be subject to the following conditions:

1. The Amended and Restated Plans will be authorized by HTGC's stockholders.

2. Each issuance of Restricted Stock to an employee will be approved by the required majority, as defined in Section

[6] *See* Executive Compensation and Related Person Disclosure, Release No. 33–8732A (Aug. 29, 2006), *as amended by*, Executive Compensation Disclosure, Release No. 33–8765 (Dec. 22, 2006) (adopted as interim final rules).

57(o) of the Act, of HTGC's directors on the basis that such issuance is in the best interests of HTGC and its stockholders.

3. The amount of voting securities that would result from the exercise of all of HTGC's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Amended and Restated Plans, at the time of issuance shall not exceed 25% of the outstanding voting securities of HTGC, except that if the amount of voting securities that would result from the exercise of all of HTGC's outstanding warrants, options, and rights issued to HTGC's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Amended and Restated Plans, would exceed 15% of the outstanding voting securities of HTGC, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Amended and Restated Plans, at the time of issuance shall not exceed 20% of the outstanding voting securities of HTGC.

4. The maximum amount of shares of Restricted Stock that may be issued under the Amended and Restated Plans will be 10% of the outstanding shares of common stock of HTGC on the effective date of the Amended and Restated Plans plus 10% of the number of shares of HTGC's common stock issued or delivered by HTGC (other than pursuant to compensation plans) during the term of the Amended and Restated Plans.

5. The Board will review the Amended and Restated Plans at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Amended and Restated Plans could have on HTGC's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Amended and Restated Plans, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Amended and Restated Plans would not have an effect contrary to the interests of HTGC's stockholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Amended and Restated Plans. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8683 Filed 5–4–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27811; 812–13335]

PowerShares Exchange-Traded Fund Trust, et al.; Notice of Application

April 30, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of open-end management investment companies, whose portfolios will consist of the component securities of certain foreign equity securities indexes or fixed income securities indexes, to issue shares (''Fund Shares'') that can be purchased from the investment companies and redeemed only in large aggregations (''Creation Units''); (b) secondary market transactions in Fund Shares to occur at negotiated prices on a national securities exchange; (c) dealers to sell Fund Shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the ''Securities Act''); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) the series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of a Creation Unit for redemption. In addition, the order would delete a condition related to future relief and expand the scope of future relief in a prior order.[1]

APPLICANTS: PowerShares Exchange-Traded Fund Trust (the ''Initial Trust''), PowerShares Global Exchange-Traded Fund Trust (the ''New Trust,'' and together with the Initial Trust, the ''Trusts''), PowerShares Capital Management LLC (the ''Adviser''), and AIM Distributors, Inc. (the ''Distributor'').

FILING DATES: The application was filed on October 19, 2006 and amended on March 29, 2007 and April 26, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is contained in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. The Trusts and the Adviser: 301 West Roosevelt Road, Wheaton, IL 60187; the Distributor: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act and organized as Massachusetts business trusts. The Trusts are organized as series funds (each such series, an ''Index Fund''). The Initial Trust currently offers and sells certain Index Funds. The Initial Trust intends to offer nine new Index Funds and the New Trust intends to offer 37 new Index Funds (each, a ''New Fund''). The Adviser is registered as an

[1] *See* PowerShares Exchange-Traded Fund Trust, Investment Company Act Release Nos. 25961 (March 4, 2003) (notice) and 25985 (March 28, 2003) (order) (the ''Prior Order'').

investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will serve as the investment adviser to each New Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), will serve as the principal underwriter for each New Fund. The Adviser may in the future retain one or more sub-advisers (''Sub-Advisers'') to manage one or more of the New Funds for which it will act as the investment adviser. The Sub-Advisers will be registered under the Advisers Act or will be exempt from such registration.

2. Each New Fund will invest in a portfolio of securities (''Portfolio Securities'') generally consisting of the component securities (''Component Securities'') of a specified securities index (the ''Underlying Indexes''). In the case of the New Funds offered by Initial Trust, the Underlying Indexes will be composed of fixed-income securities (each, a ''Fixed Income Index'') and in the case of the New Funds offered by the New Trust, the Underlying Indexes will be composed of foreign securities (each, a ''Foreign Index''). Each New Fund based on a Fixed Income Index is referred to as a ''Fixed Income Fund.'' [2] Each New Fund based on a Foreign Index is a ''Foreign Fund.'' [3] The board of trustees of each Trust or of additional open-end management investment companies created by the Adviser (''Board'') may establish additional Index Funds in the future (the ''Future Funds'') that will be based on other Foreign Indexes or Fixed Income Indexes. Applicants request that the relief requested in the application apply to any such Future Funds. Any Future Fund will (a) be advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order.[4] No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trusts, the Adviser, the Sub-Adviser, the Distributor, or a promoter of a New Fund.

3. The investment objective of each New Fund will be to provide investment results that generally correspond, before fees and expenses, to the total return of the relevant Underlying Index. A Foreign Fund will invest at least 90% of its assets in the Component Securities of its Foreign Index and in Depositary Receipts (as defined below) representing such Component Securities. A Foreign Fund may invest up to 10% of its assets in certain stock index futures, stock options, options on stock index futures, and swap contracts, in each case related to its respective Foreign Index and its Component Securities, as well as cash and cash equivalents. Each Fixed Income Fund generally will invest at least 90% of its assets in Component Securities of its respective Fixed Income Index (except with respect to the PowerShares Domestic Aggregate Bond Portfolio and the PowerShares Mortgage-Backed Securities Portfolio, as set forth below). However, each Fixed Income Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in bonds not included in its Fixed Income Index, but which the Adviser or Sub-Adviser believes will help the Fixed Income Fund track its Fixed Income Index.

4. The PowerShares Domestic Aggregate Bond Portfolio will seek to track that portion of the Merrill Lynch U.S. Domestic Index devoted to government mortgage-backed securities (''MBS'') by investing a corresponding percentage of its assets either in MBS included in the index or in to-be-announced (''TBA'') transactions on MBS. The PowerShares Mortgage-Backed Securities Portfolio will invest at least 90% of its assets in MBS included in the DB U.S. Agency Mortgage TBA Index or in TBA transactions on MBS. A ''TBA transaction'' essentially is a purchase or sale of a pass-through security for future settlement at an agreed-upon date. Applicants state that most mortgage pass-through securities trades are executed as TBA transactions. Applicants state that TBA transactions increase the liquidity and pricing efficiency of transactions in MBS because they permit similar MBS to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

5. Each Foreign Fund will utilize as an investment approach either a replication strategy or a representative sampling strategy, and each Fixed Income Fund will use a representative sampling strategy. A Foreign Fund using a replication strategy generally will hold most of the Component Securities of the Foreign Index in the same approximate proportions as the Foreign Index, but may not hold all of the securities that comprise the Foreign Index in certain instances. A New Fund using a representative sampling strategy will seek to hold a representative sample of the Component Securities of the Underlying Index and will invest in some but not all of the Component Securities of its Underlying Index. Applicants anticipate that a New Fund that utilizes a representative sampling strategy will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

6. Any Depositary Receipts held by a Foreign Fund will be negotiable securities that represent ownership of a non-U.S. company's publicly traded stock. Depositary Receipts will typically be American Depositary Receipts (''ADRs''), but may include Global Depositary Receipts (''GDRs'') and Euro Depositary Receipts (''EDRs''). ADRs, GDRs and EDRs are collectively referred to herein as ''Depositary Receipts.'' Applicants believe that, in certain cases, holding one or more Depositary Receipts rather than Component Securities of the relevant Foreign Index, will improve the liquidity, tradability and settlement of a Foreign Fund's then current Fund Deposit (as defined below) (thereby improving the efficiency of the creation and redemption process and facilitating efficient arbitrage activity), while at the same time permitting a Foreign Fund to maintain direct

[2] The Fixed Income Indexes for the Fixed Income Funds are: DB Emerging Markets USD Liquid Bond Index, Merrill Lynch U.S. Domestic Index, Merrill Lynch Global Inflation-Linked Government Index, Merrill Lynch 1–10 Years U.S. Inflation-Linked Treasury Index, Ryan/Mergent 1–30 Year Laddered Treasury Index, DB U.S. Agency Mortgage TBA Index, Wachovia Global ex-U.S. Bond Index, Wachovia Yield Focused Investment Grade Bond Index, and Wachovia High Yield Bond Index.

[3] The Foreign Indexes for the Foreign Funds are: the FTSE RAFI Developed Markets ex-U.S. 1000 Index, FTSE RAFI Developed Markets ex-U.S. Small Index, FTSE RAFI Emerging Markets Index, FTSE RAFI Europe Index, FTSE RAFI Europe Small Index, FTSE RAFI Latin America Index, FTSE RAFI Asia Pacific ex-Japan Index, FTSE RAFI Asia Pacific ex-Japan Small Index, FTSE RAFI BRIC Index, FTSE RAFI Japan Index, FTSE RAFI Canada Index, FTSE RAFI Germany Index, FTSE RAFI Hong Kong Index, FTSE RAFI Mexico Index, FTSE RAFI South Korea Index, FTSE RAFI Taiwan Index, FTSE RAFI United Kingdom Index, FTSE RAFI China Index, FTSE RAFI Australia Index, FTSE RAFI Brazil Index, FTSE RAFI France Index, FTSE RAFI South Africa Index, Indus India Index, WilderHill New Energy Global Innovation Index, International Listed Private Equity Index, Palisades Global Water Index, QSG Developed International Opportunities Index, QSG Developed International Value Index, QSG Developed International Growth Index, QSG Active Japan Index, QSG Asia-Pacific Opportunities Index, QSG Active Europe Index, QSG Active Australia Index, QSG Active Canada Index, QSG Active France Index, QSG Active Germany Index, and QSG Active UK Index.

[4] All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application.

exposure to Component Securities of its Foreign Index. Applicants intend that any Foreign Fund would be able to treat Depositary Receipts that represent Component Securities of its Foreign Index as Component Securities for purposes of any requirements that a percentage of a Foreign Fund's portfolio be invested in Component Securities of its Foreign Index.

7. Creation Units will consist of either 50,000 or 100,000 Shares, as specified in the relevant prospectus (''Prospectus''). The price of a Creation Unit will range from $1,000,000 to $5,000,000. Creation Units may be purchased only by or through a party that has entered into an agreement with the Distributor regarding creations and redemptions of Creation Units (an ''Authorized Participant''). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency that is registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC'') system. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A New Fund also may sell Creation Units on a cash-only basis in limited circumstances.[5] An investor wishing to purchase a Creation Unit from a New Fund will have to transfer to the New Fund a ''Fund Deposit'' consisting of: (a) a portfolio of securities that has been selected by the Adviser to correspond to the returns on the relevant Underlying Index (''Deposit Securities''), and (b) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value (''NAV'') per Creation Unit (''Cash Component'').[6] An investor purchasing a Creation Unit from a New Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from the New Fund incurring costs in connection with the purchase of the Creation Units.[7] Each New Fund will disclose the Transaction Fees charged by the New Fund in its Prospectus and the method of calculating the Transaction Fees in its Prospectus or statement of additional information (''SAI'').

8. Orders to purchase Creation Units of a New Fund will be placed with the Distributor who will be responsible for transmitting each order to each New Fund. The Distributor will issue, and maintain records of, confirmations of acceptance to purchasers of Creation Units and delivery instructions to the Trusts (to implement the delivery of Creation Units). The Distributor will also be responsible for delivering Prospectuses to purchasers of Creation Units.

9. Persons purchasing Creation Units from a New Fund may hold the Fund Shares or sell some or all of them in the secondary market. Shares of the New Funds will be listed on a national securities exchange, as defined in section 2(a)(26) of the Act (an ''Exchange''), and traded in the secondary market in the same manner as other equity securities. An Exchange specialist (''Specialist'') will be assigned to make a market in Shares. If The NASDAQ Stock Market, Inc. (''NASDAQ'') is the listing Exchange, one or more member firms of NASDAQ will act as a market maker (''Market Maker'') and maintain a market on NASDAQ for Fund Shares trading on NASDAQ. The price of Fund Shares traded on an Exchange will be based on a current bid/offer market. Each Fund Share is currently expected to have a market value of between $20 and $50. Transactions involving the sale of Fund Shares in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Specialist or Market Maker, in providing for a fair and orderly secondary market for Fund Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Fund Shares will include both institutional and retail investors.[8] Applicants expect that the price at which the Fund Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Fund Shares will not trade at a material discount or premium in relation to their NAV.

11. Fund Shares will not be individually redeemable. Fund Shares will only be redeemable in Creation Units through a New Fund. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (a) the Portfolio Securities designated to be delivered for Creation Unit redemptions on the date the request for redemption is made (''Fund Securities''),[9] which

[5] Over time, the Adviser or Sub-Adviser may conclude that operating on an exclusively in-kind basis for a New Fund may present operational problems for such New Fund. Therefore, each Trust may permit, in its discretion, with respect to a New Fund under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. For example, each of the PowerShares Domestic Aggregate Bond Portfolio and the PowerShares Mortgage-Backed Securities Portfolio will require purchasing investors to substitute cash in lieu of any Deposit Security that is a mortgage TBA transaction. This cash in lieu of mortgage TBAs will likely result in cash-only creations with respect to the PowerShares Mortgage-Backed Securities Portfolio. More generally, substitution might be permitted or required because one or more Deposit Securities may be unavailable, may not be available in the quantity needed to make a Portfolio Deposit, or may not be eligible for trading by an Authorized Participant (or the investor on whose behalf the Authorized Participant is acting). Applicants currently expect that PowerShares FTSE RAFI Taiwan Portfolio, PowerShares FTSE RAFI South Korea Portfolio, PowerShares FTSE RAFI Brazil Portfolio, PowerShares FTSE RAFI BRIC Portfolio and PowerShares Indus India Portfolio will utilize ''cash-only'' purchases and redemptions of Creation Units due to local exchange restrictions on short sales and/or free delivery of stocks, as well as difficulty associated with borrowing stocks in the applicable markets.

[6] On each business day, prior to the opening of trading on the Exchange (as defined below), the Adviser or Sub-Adviser will make available a list of the names and the required number of shares of each Deposit Security required for the Fund Deposit for each New Fund. That Fund Deposit will apply to all purchases of Creation Units until a new Fund Deposit for a New Fund is announced. Each New Fund reserves the right to permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities in certain circumstances. With respect to the Foreign Funds, the Exchange or other market information provider will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing on a per share basis the sum of the current value of the Deposit Securities and the estimated Cash Component. As the respective international local markets close, the market value of the Deposit Securities will continue to be updated for foreign exchange rates for the remainder of the U.S. trading day at the prescribed 15 second interval. With respect to the Fixed Income Funds, the Exchange or other market information provider will disseminate a calculation of the approximate NAV of a Fund Share (the ''Intra-day Indicative Value'' or ''IIV'') every 15 seconds throughout the trading day, separately from the consolidated tape.

[7] When a New Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

[8] Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or its participants will maintain records reflecting the beneficial owners of Fund Shares.

[9] The New Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act. As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the securities held by the New Funds. In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, each New Fund will comply with

may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Cash Component, although the actual amount of the Cash Redemption Payment may differ from the Cash Component if the Fund Securities are not identical to the Deposit Securities on a given day. An investor may receive the cash equivalent of a Fund Security upon its request if, for example, the investor were constrained from effecting transactions in the Fund Security by regulation or policy.

12. A redeeming investor will pay a Transaction Fee to offset transaction costs, whether the redemption proceeds are in kind or cash. When an investor redeems for cash rather than in kind, the investor may pay a higher Transaction Fee. Such Transaction Fee will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.

13. Applicants state that neither the Trusts nor any New Fund will be marketed or otherwise held out as a ''mutual fund.'' Rather, applicants state that each New Fund will be marketed as an ''exchange-traded fund.'' No New Fund marketing materials (other than as required in the Prospectus) will refer to a New Fund as an ''open-end'' or ''mutual fund,'' except to contrast a New Fund with a conventional open-end management investment company. In all marketing materials where the method of obtaining, buying, or selling Fund Shares is described, applicants will include a statement to the effect that Fund Shares are not redeemable through a New Fund except in Creation Units. The same type of disclosure will be provided in each New Fund's Prospectus, SAI, advertising materials, and all reports to shareholders. The New Funds will provide copies of their annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Fund Shares.

14. Applicants also seek to amend the Prior Order to modify the terms under which the Initial Trust may offer additional series in the future. The Prior Order is currently subject to a condition that does not permit applicants to register any series by means of filing a post-effective amendment to the Initial Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the series will be listed on a national securities exchange without the need for filing pursuant to rule 19b–4 under the Exchange Act. The order would amend the Prior Order to delete this condition. In addition, the order would expand the relief under the Prior Order to include registered investment companies other than the Initial Trust. As amended, the Prior Order would permit the introduction of series of the Initial Trust and series of other open-end management investment companies (collectively, ''Future Index Funds'') that (a) are advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser; (b) track Underlying Indices comprised of equity securities issued by domestic issuers that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Initial Trust, the New Trust or any sub-advisor or promoter of an Index Fund, and (c) comply with the respective terms and conditions of the Prior Order, as amended by the order.

15. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with section 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Index Funds and the commencement of secondary market trading of such Future Index Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the exchange-traded funds advised by the Adviser and would remain appropriate for Future Index Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Index Fund to be listed on an Exchange without the need for a rule 19b–4 filing under the Exchange Act is not necessary to meet the standards under section 6(c) and 17(b) of the Act.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit each New Fund, as a series of an open-end management investment company, to issue Fund Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Fund Shares in Creation Units from each New Fund and redeem Creation Units. Applicants further state that because the market price of Fund Shares will be disciplined by arbitrage opportunities, investors should be able to sell Fund Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Fund Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Fund Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

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the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The Prospectus for each New Fund will also state that an Authorized Participant that is not a Qualified Institutional Buyer (''QIB'') will not be able to receive Fund Securities that are restricted securities eligible for resale under rule 144A.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Fund Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Fund Shares does not involve the New Funds as parties and cannot result in dilution of an investment in Fund Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Fund Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the Foreign Funds to pay redemption proceeds more than seven days after the tender of Fund Shares for redemption. Applicants anticipate that the delivery of redemption proceeds would be made at the latest within 14 calendar days after the redemption request except to the extent that a redemption delivery is delayed due to the proclamation of new or special holidays, the treatment by market participants of certain days as ''informal holidays,'' the elimination of existing holidays or changes in local securities delivery practices. At all other times and except as disclosed in the relevant Prospectus, product description (''Product Description'') and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.[10] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the Prospectus, the Product Description and/or the SAI for each Foreign Fund will disclose those local holidays (over the period of at least one year following the date of the Prospectus, Product Description or SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the New Fund. Applicants are not requesting relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 24(d) of the Act

8. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Fund Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[11]

9. Applicants state that Fund Shares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that Fund Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Fund Shares will be exchange-listed, prospective investors will have access to several types of market information about Fund Shares. Applicants state that information regarding market price and volume 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 volume information for Fund Shares also will be published daily in the financial section of newspapers. The website maintained for the Trusts will include, for each New Fund, the prior business day's NAV, the mid-point of the bid-ask spread at the time of calculation of NAV (''Bid/Ask Price'') and calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV, and data in chart format displaying the frequency distribution of

[10] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[11] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in a New Fund's Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Adviser, breaks them down into the constituent Fund Shares, and sells Fund Shares directly to its customers, or if it chooses to couple the purchase of a supply of new Fund Shares with an active selling effort involving solicitation of secondary market demand for Fund Shares. A New Fund's Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. A New Fund's Prospectus also will state that dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Fund Shares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[12]

10. Investors also will receive a Product Description describing a New Fund and its Fund Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Fund Shares that is tailored to meet the needs of investors purchasing Fund Shares in the secondary market.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The New Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the New Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund''). Applicants state that because the definition of ''affiliated person'' includes any person owning 5% or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the New Fund so long as fewer than twenty Creation Units are in existence, and any purchaser that owns more than 25% of a New Fund's outstanding Fund Shares will be affiliated with a New Fund. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the New Funds solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the outstanding Fund Shares of either Trust or one or more New Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons or second tier affiliates of a New Fund from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons and second tier affiliates described above to effect a transaction detrimental to the other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the New Fund.

Applicants' Conditions

Applicants agree that the Prior Order will continue to be subject to the same conditions, except that condition 1 will be deleted. With respect to the New Funds, applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each New Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, the Fund Shares are issued by a registered investment company, and the acquisition of Fund Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a New Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the New Fund regarding the terms of the investment.

2. As long as a Trust operates in reliance on the requested order, its Fund Shares will be listed on an Exchange.

3. Neither the Trusts nor any of the New Funds will be advertised or marketed as an open-end fund or a mutual fund. Each New Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the New Fund and tender those Fund Shares for redemption to such New Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable and that owners of Fund Shares may acquire those Fund Shares from the New Fund and tender those Fund Shares for redemption to the New Fund in Creation Units only.

4. The Web site maintained for the Trusts, which is and will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis, for each New Fund: (a) the prior business day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) 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. In addition, the Product Description for each New Fund will state that the website for the New Fund has information about the premiums and discounts at which the Fund Shares have traded.

5. Each New Fund's Prospectus and annual report will also include: (a) the information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Fund Share basis for one, five and ten year periods (or life of the New Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the applicable Underlying Index.

6. Before a New Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and

[12] The Bid/Ask Price per Fund Share of a New Fund is determined using the highest bid and the lowest offer on the Exchange at the time of calculation of such New Fund's NAV.

member organizations effecting transactions in Fund Shares to deliver a Product Description to purchasers of Fund Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8599 Filed 5–4–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27809; 812–13356]

SSgA Funds Management, Inc., *et al.*; Notice of Application

April 30, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order that permits: (a) Open-end management investment companies, whose series are based on certain equity securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; (c) dealers to sell shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act''); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares; and (e) under certain circumstances, the series that track certain foreign equity securities indices to pay redemption proceeds more than seven days after the tender of shares (the ''Prior Order'').[1] Applicants seek to amend the Prior Order in order to offer additional series based on certain fixed income securities indices (the ''New Funds''). In addition, the order would delete a condition related to future relief in the Prior Order.

APPLICANTS: SSgA Funds Management, Inc. (''Adviser''), State Street Global Markets LLC (''Distributor''), streetTRACKS® Series Trust, and streetTRACKS® Index Shares Funds (each, a ''Trust'' and together, the ''Trusts'').

FILING DATES: The application was filed on January 5, 2007 and amended on April 23, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. Applicants: Scott M. Zoltowski, Esq., State Street Global Advisors, One Lincoln Street, Boston Massachusetts 02111; Vincent Manzi, State Street Global Markets LLC, One Lincoln Street, Boston, Massachusetts 02111; and W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551–6868, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. Each Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Trusts are organized as series funds with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to the New Funds. The Adviser may retain sub-advisers (''Sub-Advisers'') to manage the assets of a New Fund. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''), will serve as the principal underwriter of the New Funds'' shares.

2. Each Trust is currently permitted to offer series based on equity securities indices in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trusts to offer the New Funds that, except as described in the application, would operate in a manner identical to the existing series of the Trusts that are subject to the Prior Order.

3. The New Funds will invest in portfolios of securities generally consisting of the component securities of the Lehman Brothers 1–3 Year U.S. Treasury Index, Lehman Brothers Intermediate U.S. Treasury Index, Lehman Brothers Long U.S. Treasury Index, Lehman Brothers U.S. Aggregate Index, Lehman Brothers 1–3 Year U.S. Corporate Investment Grade Index, Lehman Brothers U.S. Intermediate Corporate Grade Index, and Lehman Brothers U.S. Long Corporate Investment Grade Index (the ''Underlying Indexes''). No entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trusts, the Adviser, any Sub-Adviser, the Distributor, or a promoter of a New Fund.

4. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of the relevant Underlying Index. The Adviser may fully replicate a New Fund's relevant Underlying Index or use a representative sampling strategy where the New Fund will seek to hold a representative sample of the component securities of the Underlying Index. Each New Fund generally will invest at least 80% or 90% of its total assets, as disclosed in the relevant prospectus, in the securities that comprise the relevant Underlying Index, but at times may invest up to 20% of its total assets in certain futures, options, and swap contracts, cash and cash equivalents, as well as securities not included in its Underlying Index which the Adviser believes will help the New Fund track the Underlying Index. At all times, a New Fund will hold, in the aggregate, at

[1] State Street Bank and Trust Company, et al., Investment Company Act Release No. 24666 (Sept. 24, 2000), superseding The Select Sector SPDR Trust, Investment Company Act Release No. 23534 (Nov. 13, 1998), as amended by SSgA Funds Management, Inc., et al., Investment Company Act Release No. 27543 (Nov. 1, 2006).

least 80% of its total assets in component securities and investments that have economic characteristics that are substantially identical to the economic characteristics of the component securities of its Underlying Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

5. Applicants state that a New Fund will comply with the federal securities laws in accepting a deposit of a portfolio of securities designated by the Adviser to correspond generally to the price and yield of the New Fund's Underlying Index (''Deposit Securities'') [2] and satisfying redemptions with portfolio securities of the New Fund (''Fund Securities''), including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.[3]

6. Applicants state that the New Funds will operate in a manner identical to the operation of the existing series of the Trusts in the Prior Order, except as specifically noted by applicants (and summarized in this notice), and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

Future Relief

7. Applicants also seek to amend the Prior Order to modify the terms under which the Trusts may offer additional series in the future based on other securities indices (''Future Funds''). The Prior Order is currently subject to a condition that does not permit applicants to register the shares of any Future Fund by means of filing a post-effective amendment to a Trust's registration statement or by any other means, unless applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or if the Future Fund could be listed on a national securities exchange (''Exchange'') without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

8. The order would amend the Prior Order to delete this condition. Any Future Funds will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser; (b) track Underlying Indices that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Trusts or any Sub-Adviser or promoter of a Future Fund, and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

9. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing series of the Trusts and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b–4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Applicants' Condition

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8598 Filed 5–4–07; 8:45 am]

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[2] Applicants state that a cash-in-lieu amount will replace any ''to-be-announced'' (''TBA'') transaction that is listed as a Deposit Security of any New Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security.

[3] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, New Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The prospectus for a New Fund will also state that an authorized participant that is not a ''Qualified Institutional Buyer,'' as defined in rule 144A under the Securities Act, will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, May 8, 2007 at 2 p.m.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Tuesday, May 8, 2007 at 2 p.m. has been changed to Tuesday, May 8, 2007 at 12:30 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 2, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8649 Filed 5–4–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8794; 34–55682]

Order Making Fiscal Year 2008 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b), and 31(c) of the Securities Exchange Act of 1934

April 30, 2007.

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3] Finally, Sections 31(b) and (c) of the Exchange Act require national securities exchanges and national securities associations, respectively, to pay fees to the

[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] 15 U.S.C. 78n(g).

Commission on transactions in specified securities.[4]

The Investor and Capital Markets Fee Relief Act (''Fee Relief Act'')[5] amended Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act to require the Commission to make annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal Year 2008 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Section 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, Sections 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.

Section 6(b)(5) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2008. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2008], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal year 2008].'' That is, the adjusted rate is determined by dividing the ''target offsetting collection amount'' for fiscal year 2008 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2008.

Section 6(b)(11)(A) specifies that the ''target offsetting collection amount'' for fiscal year 2008 is $234,000,000.[8] Section 6(b)(11)(B) defines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2008 as ''the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2008] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *.''

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2008, the Commission is using the same methodology it developed in consultation with the Congressional Budget Office (''CBO'') and Office of Management and Budget (''OMB'') to project aggregate offering price for purposes of the fiscal year 2007 annual adjustment. Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2008 to be $5,959,775,433,491.[9] Based on this estimate, the Commission calculates the fee rate for fiscal 2008 to be $39.30 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

III. Fiscal Year 2008 Annual Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to Section 31(j)(2),[10] which currently is $15.30 per million of the aggregate dollar amount of sales of specified securities transacted on the exchange. Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of sales of specified securities transacted by or through any member of the association otherwise than on an exchange. Section 31(j)(1) requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011.[11]

Section 31(j)(1) specifies the method for determining the annual adjustment for fiscal year 2008. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for [fiscal year 2008], is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the target offsetting collection amount for [fiscal year 2008].''

Section 31(*l*)(1) specifies that the ''target offsetting collection amount'' for fiscal year 2008 is $892,000,000.[12] Section 31(*l*)(2) defines the ''baseline estimate of the aggregate dollar amount of sales'' as ''the baseline estimate of the aggregate dollar amount of sales of securities * * * to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities

[4] 15 U.S.C. 78ee(b) and (c). In addition, Section 31(d) of the Exchange Act requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures. 15 U.S.C. 78ee(d).

[5] Pub. L. No. 107–123, 115 Stat. 2390 (2002).

[6] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), 78n(g)(6), 78ee(j)(1), and 78ee(j)(3). Section 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in specified circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal years 2002 through 2011.

[7] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target offsetting collection amount'' specified in Section 6(b)(11)(A) for that fiscal year.

[8] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual adjustment mechanism will result in additional fee rate reductions if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

[9] Appendix A explains how we determined the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2008 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2008 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2008.

[10] Order Making Fiscal Year 2007 Annual Adjustments to the Fee Rates Applicable under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33–8681 (April 28, 2006), 71 FR 26132 (May 3, 2006).

[11] The annual adjustments, as well as the mid-year adjustments required in specified circumstances under Section 31(j)(2) in fiscal years 2002 through 2011, are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the ''target offsetting collection amount'' specified in Section 31(*l*)(1) for that fiscal year.

[12] Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projections of dollar volume for fiscal years 2002 through 2011. In any fiscal year through fiscal year 2011, the annual and, in specified circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

exchange) during [fiscal year 2008] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *.''

To make the baseline estimate of the aggregate dollar amount of sales for fiscal year 2008, the Commission is using the same methodology it developed in consultation with the CBO and OMB to project dollar volume for purposes of prior fee adjustments.[13] Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal year 2008 to be $78,732,152,559,457. Based on this estimate, and an estimated collection of $18,017 in assessments on security futures transactions under Section 31(d) in fiscal year 2008, the uniform adjusted rate for fiscal year 2008 is 11.00 per million.[14]

IV. Effective Dates of the Annual Adjustments

Section 6(b)(8)(A) of the Securities Act provides that the fiscal year 2008 annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act shall take effect on the later of October 1, 2007, or five days after the date on which a regular appropriation to the Commission for fiscal year 2008 is enacted.[15] Section 13(e)(8)(A) and 14(g)(8)(A) of the Exchange Act provide for the same effective date for the annual adjustments to the fee rates applicable under Sections 13(e) and 14(g) of the Exchange Act.[16]

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2008 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2007, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2008 is enacted.

V. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act,[17]

It is hereby ordered that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $39.30 per million effective on the later of October 1, 2007, or five days after the date on which a regular appropriation to the Commission for fiscal year 2008 is enacted; and

It is further ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $11.00 per million effective on the later of October 1, 2007, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2008 is enacted.

By the Commission.

Nancy M. Morris,

Secretary.

Appendix A

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the ''aggregate maximum offering prices,'' which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2008, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to March 2007, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2008

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (March 1997–March 2007). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more ''typical'' value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from March 1997 to March 2007.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta_{t-1}$. The model can be estimated using standard commercially available software such as SAS or Eviews. Using least squares, the estimated parameter values are $\alpha = 0.00781$ and $\beta = -0.76766$.

6. For the month of April 2007 forecast $\Delta_{t = 4/07} = \alpha + \beta e_{t = 3/07}$. For all subsequent months, forecast $\Delta_{t} = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for June 2007 is given by $FLAAMOP_{t = 6/07} = \log(AAMOP_{t = 3/07}) + \Delta_{t = 4/07} + \Delta_{t = 5/07} + \Delta_{t = 6/07}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For June 2007, this gives a forecast AAMOP of $21.2 Billion (Column I), and a forecast AMOP of $444.9 Billion (Column J).

10. Iterate this process through September 2008 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2008 of $5,959,775,433,491.

B. Using the Forecasts From A to Calculate the New Fee Rate

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/1/07 and 9/30/08 to be $5,959,775,433,491.

2. The rate necessary to collect the target $234,000,000 in fee revenues set by Congress is then calculated as: $234,000,000 ÷ $5,959,775,433,491 = 0.00003926 (or $39.30 per million.).

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[13] Appendix B explains how we determined the ''baseline estimate of the aggregate dollar amount of sales'' for fiscal year 2007 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2007 annual adjustment based on that estimate. The appendix also includes the data used by the Commission in making its ''baseline estimate of the aggregate dollar amount of sales'' for fiscal year 2007.

[14] The calculation of the adjusted fee rate assumes that the current fee rate of $15.30 per million will apply through October 31, 2007, due to the operation of the effective date provision contained in Section 31(j)(4)(A) of the Exchange Act.

[15] 15 U.S.C. 77f(b)(8)(A).

[16] 15 U.S.C. 78m(e)(8)(A) and 78n(g)(8)(A).

[17] 15 U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

Table A. Estimation of baseline of aggregate maximum offering prices .

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/07 to 9/30/08 ($Millions)	5,959,775
b. Implied fee rate ($234 Million / a)	$39.30

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-97	20	140,809	7,040	22.675					
Apr-97	22	182,657	8,303	22.840	0.165				
May-97	21	163,702	7,795	22.777	-0.063				
Jun-97	21	162,111	7,720	22.767	-0.010				
Jul-97	22	168,007	7,637	22.756	-0.011				
Aug-97	21	153,705	7,319	22.714	-0.042				
Sep-97	21	179,559	8,550	22.869	0.155				
Oct-97	23	260,719	11,336	23.151	0.282				
Nov-97	19	219,618	11,559	23.171	0.020				
Dec-97	22	228,605	10,391	23.064					
Jan-98	20	228,030	11,402	23.157					
Feb-98	19	250,266	13,172	23.301					
Mar-98	22	378,185	17,190	23.568					
Apr-98	21	242,310	11,539	23.169	-0.399				
May-98	20	298,454	14,923	23.426	0.257				
Jun-98	22	328,994	14,954	23.428	0.002				
Jul-98	22	272,957	12,407	23.242	-0.187				
Aug-98	21	392,104	18,672	23.650	0.409				
Sep-98	21	325,144	15,483	23.463	-0.187				
Oct-98	22	139,786	6,354	22.572	-0.891				
Nov-98	20	269,065	13,453	23.322	0.750				
Dec-98	22	248,596	11,300	23.148	-0.174				
Jan-99	19	253,448	13,339	23.314	0.166				
Feb-99	19	217,433	11,444	23.161	-0.153				
Mar-99	23	415,145	18,050	23.616	0.456				
Apr-99	21	431,280	20,537	23.746	0.129				
May-99	20	229,082	11,454	23.162	-0.584				

Jun-99	22	367,943	16,725	23.540	0.379						
Jul-99	21	332,623	15,839	23.486	-0.054						
Aug-99	22	240,157	10,916	23.114	-0.372						
Sep-99	21	236,011	11,239	23.143	0.029						
Oct-99	21	216,883	10,328	23.058	-0.085						
Nov-99	21	372,582	17,742	23.599	0.541						
Dec-99	22	319,846	14,538	23.400	-0.199						
Jan-00	20	282,165	14,108	23.370	-0.030						
Feb-00	20	665,367	33,268	24.228	0.858						
Mar-00	23	550,107	23,918	23.898	-0.330						
Apr-00	19	244,510	12,869	23.278	-0.620						
May-00	22	269,774	12,262	23.230	-0.048						
Jun-00	22	406,409	18,473	23.640	0.410						
Jul-00	20	230,894	11,545	23.169	-0.470						
Aug-00	23	257,797	11,209	23.140	-0.030						
Sep-00	20	332,120	16,606	23.533	0.393						
Oct-00	22	362,493	16,477	23.525	-0.008						
Nov-00	21	317,653	15,126	23.440	-0.086						
Dec-00	20	246,006	12,300	23.233	-0.207						
Jan-01	21	462,726	22,035	23.816	0.583						
Feb-01	19	388,304	20,437	23.741	-0.075						
Mar-01	22	523,443	23,793	23.893	0.152						
Apr-01	20	289,212	14,461	23.395	-0.498						
May-01	22	274,298	12,468	23.246	-0.148						
Jun-01	21	348,268	16,584	23.532	0.285						
Jul-01	21	264,590	12,600	23.257	-0.275						
Aug-01	23	245,591	10,678	23.091	-0.165						
Sep-01	15	178,524	11,902	23.200	0.108						
Oct-01	23	260,719	11,336	23.151	-0.049						
Nov-01	21	286,199	13,629	23.335	0.184						
Dec-01	20	395,230	19,762	23.707	0.372						
Jan-02	21	401,290	19,109	23.673	-0.034						
Feb-02	19	476,837	25,097	23.946	0.273						
Mar-02	20	380,160	19,008	23.668	-0.278						

Apr-02	22	282,947	12,861	23.277	-0.391							
May-02	22	215,645	9,802	23.006	-0.272							
Jun-02	20	277,757	13,888	23.354	0.348							
Jul-02	22	208,638	9,484	22.973	-0.381							
Aug-02	22	265,750	12,080	23.215	0.242							
Sep-02	20	109,565	5,478	22.424	-0.791							
Oct-02	23	179,374	7,799	22.777	0.353							
Nov-02	20	243,590	12,179	23.223	0.446							
Dec-02	21	212,838	10,135	23.039	-0.184							
Jan-03	21	201,839	9,611	22.986	-0.053							
Feb-03	19	144,642	7,613	22.753	-0.233							
Mar-03	21	444,331	21,159	23.775	1.022							
Apr-03	21	142,373	6,780	22.637	-1.138							
May-03	21	328,792	15,657	23.474	0.837							
Jun-03	21	281,580	13,409	23.319	-0.155							
Jul-03	22	304,383	13,836	23.351	0.031							
Aug-03	21	328,351	15,636	23.473	0.122							
Sep-03	21	459,563	21,884	23.809	0.336							
Oct-03	23	285,039	12,393	23.240	-0.569							
Nov-03	19	257,779	13,567	23.331	0.091							
Dec-03	22	244,998	11,136	23.133	-0.197							
Jan-04	20	369,784	18,489	23.640	0.507							
Feb-04	19	221,517	11,659	23.179	-0.461							
Mar-04	23	448,543	19,502	23.694	0.514							
Apr-04	21	260,029	12,382	23.240	-0.454							
May-04	20	227,239	11,362	23.154	-0.086							
Jun-04	21	370,668	17,651	23.594	0.441							
Jul-04	21	305,519	14,549	23.401	-0.193							
Aug-04	22	179,688	8,168	22.823	-0.577							
Sep-04	21	357,007	17,000	23.556	0.733							
Oct-04	21	254,489	12,119	23.218	-0.338							
Nov-04	21	363,406	17,305	23.574	0.356							
Dec-04	22	570,918	25,951	23.979	0.405							
Jan-05	20	375,484	18,774	23.656	-0.324							

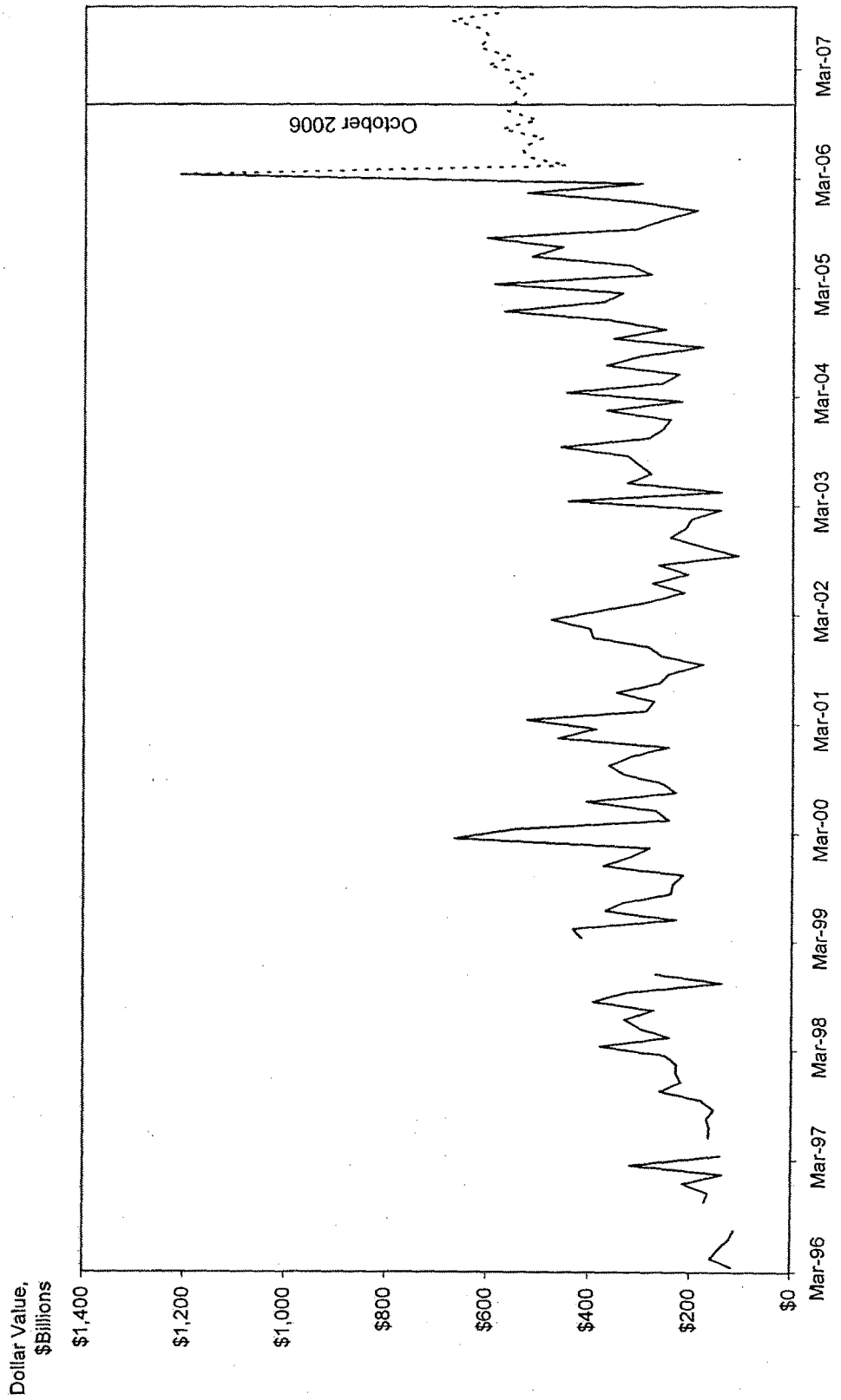
Feb-05	19	338,922	17,838	23.605	-0.051					
Mar-05	22	590,862	26,857	24.014	0.409					
Apr-05	21	282,018	13,429	23.321	-0.693					
May-05	21	323,652	15,412	23.458	0.138					
Jun-05	22	517,022	23,501	23.880	0.422					
Jul-05	20	457,487	22,874	23.853	-0.027					
Aug-05	23	605,534	26,328	23.994	0.141					
Sep-05	21	312,281	14,871	23.423	-0.571					
Oct-05	21	258,956	12,331	23.235	-0.187					
Nov-05	21	192,736	9,178	22.940	-0.295					
Dec-05	21	308,134	14,673	23.409	0.469					
Jan-06	20	526,550	26,328	23.994	0.585					
Feb-06	19	301,446	15,866	23.487	-0.506					
Mar-06	23	1,211,344	52,667	24.687	1.200					
Apr-06	19	407,345	21,439	23.788	-0.899					
May-06	22	260,121	11,824	23.193	-0.595					
Jun-06	22	375,296	17,059	23.560	0.367					
Jul-06	20	232,654	11,633	23.177	-0.383					
Aug-06	23	310,050	13,480	23.325	0.147					
Sep-06	20	236,782	11,839	23.195	-0.130					
Oct-06	22	213,342	9,697	22.995	-0.200					
Nov-06	21	292,456	13,926	23.357	0.362					
Dec-06	20	349,512	17,476	23.584	0.227					
Jan-07	20	372,740	18,637	23.648	0.064					
Feb-07	19	278,753	14,671	23.409	-0.239					
Mar-07	22	862,786	39,218	24.392	0.983					
Apr-07	20					23.694	0.348	20,722	414,450	
May-07	22					23.702	0.357	20,954	460,977	
Jun-07	21					23.709	0.366	21,187	444,929	
Jul-07	21					23.717	0.375	21,423	449,890	
Aug-07	23					23.725	0.384	21,662	498,230	
Sep-07	19					23.733	0.392	21,904	416,170	
Oct-07	23					23.741	0.401	22,148	509,401	
Nov-07	21					23.749	0.409	22,395	470,291	

Dec-07	20						23.756	0.417	22,644		452,890
Jan-08	21						23.764	0.424	22,897		480,836
Feb-08	20						23.772	0.432	23,152		463,044
Mar-08	20						23.780	0.440	23,410		468,207
Apr-08	22						23.788	0.447	23,671		520,769
May-08	21						23.795	0.454	23,935		502,640
Jun-08	21						23.803	0.461	24,202		508,244
Jul-08	22						23.811	0.468	24,472		538,382
Aug-08	21						23.819	0.475	24,745		519,640
Sep-08	21						23.827	0.482	25,021		525,433

Figure A

Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)

(Dashed Line Indicates Forecast Values)



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Appendix B

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to investors based on the value of their transactions. This appendix provides the formula for determining such fees, which the Commission adjusts annually, and may adjust semi-annually.[18] In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected dollar transaction volume on the securities exchanges and certain over-the-counter markets over the course of the year. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected dollar transaction volume.

For 2008, the Commission has estimated dollar transaction volume by projecting forward the trend established in the previous decade. More specifically, dollar transaction volume was forecasted for months subsequent to March 2007, the last month for which the Commission has data on transaction volume.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Sales for Fiscal Year 2008

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 1997–March 2007). The monthly aggregate dollar amount of sales (exchange plus certain over-the-counter markets) is presented in column C of Table B.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.014 and the standard deviation 0.115. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 2.1%.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for March 2007 ($238,343,650,750) to forecast ADS for April 2007 ($243,433,544,609 = $238,343,650,750 × 1.021).[19] Multiply by the number of trading days in April 2007 (20) to obtain a forecast of the total dollar volume for the month ($4,868,670,892,189). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table B. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log (ADS_t / ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, * * * \Delta_{120}\}$. These are given by $\mu = 0.014$ and $\sigma = 0.115$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp (\mu + \sigma^2/2)$, or on average $ADS_t = 1.021 \times ADS_{t-1}$.

6. For April 2007, this gives a forecast ADS of $1.021 \times \$238,343,650,750 = \$243,433,544,609$. Multiply this figure by the 20 trading days in April 2007 to obtain a total dollar volume forecast of $4,868,670,892,189.

7. For May 2007, multiply the April 2007 ADS forecast by 1.021 to obtain a forecast ADS of $248,632,134,545. Multiply this figure by the 22 trading days in May 2007 to obtain a total dollar volume forecast of $5,469,906,959,979.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A to Calculate the New Fee Rate

1. Use Table B to estimate fees collected for the period 10/1/07 through 10/31/07. The projected aggregate dollar amount of sales for this period is $6,355,786,096,164. Projected fee collections at the current fee rate of 0.0000153 are $97,243,527.

2. Estimate the amount of assessments on securities futures products collected during 10/1/07 and 9/30/08 to be $18,017 by projecting a 2.1% monthly increase from a base of $1,150 in March 2007.

3. Subtract the amounts $97,243,527 and $18,017 from the target offsetting collection amount set by Congress of $892,000,000 leaving $794,738,456 to be collected on dollar volume for the period 11/1/07 through 9/30/08.

4. Use Table B to estimate dollar volume for the period 11/1/07 through 9/30/08. The estimate is $72,376,366,463,293. Finally, compute the fee rate required to produce the additional $794,738,456 in revenue. This rate is $794,738,456 divided by $72,376,366,463,293 or 0.0000109806.

5. Round the result to the seventh decimal point, yielding a rate of .0000110 (or $11.00 per million).

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[18] Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

[19] The value 1.021 has been rounded. All computations are done with the unrounded value.

Table B. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/07 to 10/31/07 ($Millions)	6,355,786
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/07 to 9/30/08 ($Millions)	72,376,366
c. Estimated collections in assessments on securities futures products in FY 2008 ($Millions)	0.018
d. Implied fee rate (($892,000,000 - 0.0000153*a - c) /b)	$11.0

Data

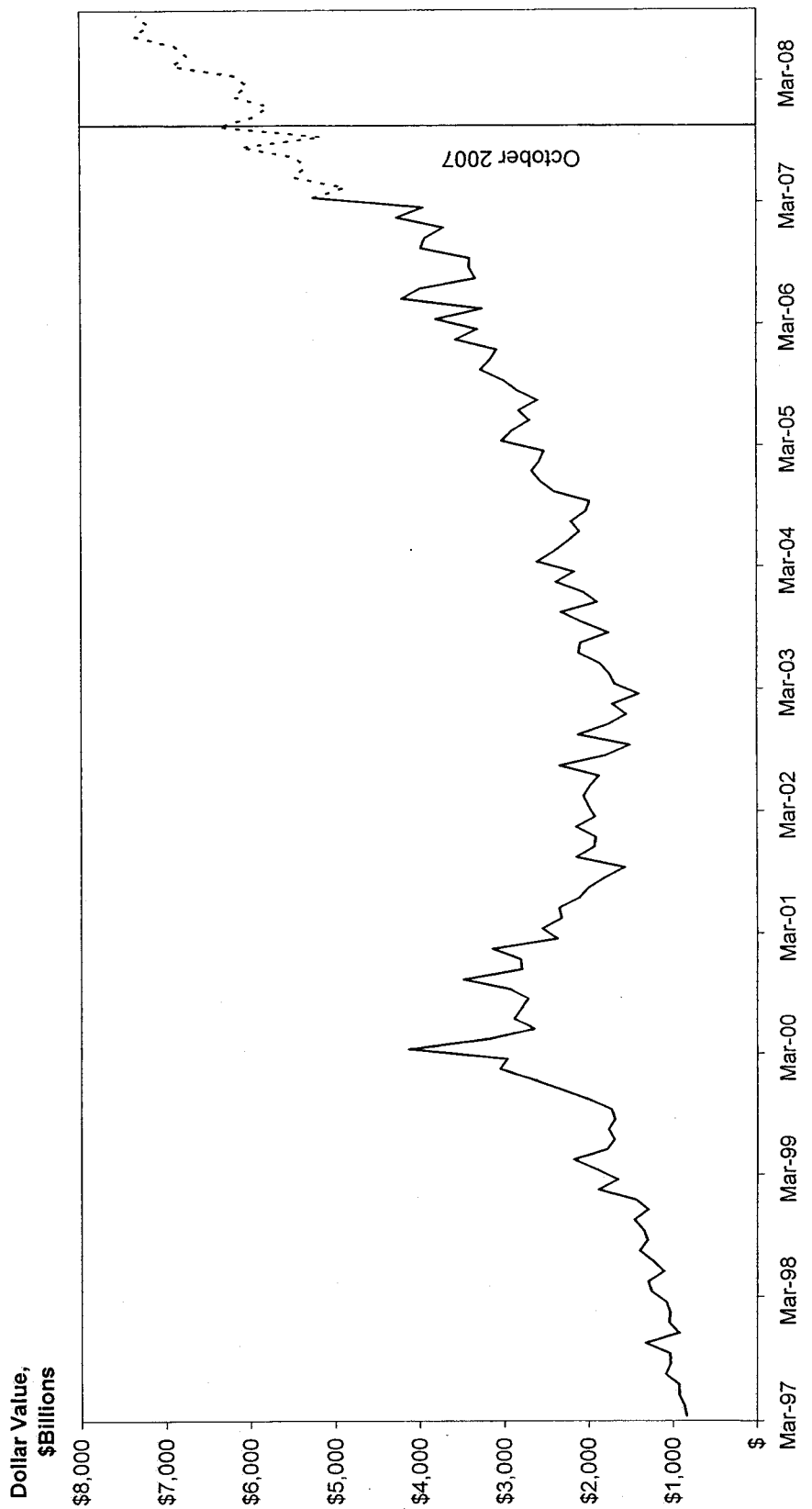
(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Mar-97	20	839,192,728,788	41,959,636,439	-		
Apr-97	22	862,799,213,315	39,218,146,060	-0.068		
May-97	21	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	1,031,344,138,751	49,111,625,655	-0.005		
Sep-97	21	1,036,460,244,602	49,355,249,743	0.005		
Oct-97	23	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	926,017,878,587	48,737,783,084	-0.171		
Dec-97	22	1,046,220,806,199	47,555,491,191	-0.025		
Jan-98	20	1,037,925,292,902	51,896,264,645	0.087		
Feb-98	19	1,081,705,333,396	56,931,859,652	0.093		
Mar-98	22	1,259,994,685,467	57,272,485,703	0.006		
Apr-98	21	1,298,494,359,253	61,833,064,726	0.077		
May-98	20	1,110,221,658,995	55,511,082,950	-0.108		
Jun-98	22	1,243,779,791,913	56,535,445,087	0.018		
Jul-98	22	1,399,011,433,748	63,591,428,807	0.118		
Aug-98	21	1,307,501,463,442	62,261,974,450	-0.021		
Sep-98	21	1,352,428,235,083	64,401,344,528	0.034		
Oct-98	22	1,460,835,397,598	66,401,608,982	0.031		
Nov-98	20	1,298,403,768,065	64,920,188,403	-0.023		
Dec-98	22	1,442,697,787,306	65,577,172,150	0.010		
Jan-99	19	1,884,555,055,910	99,187,108,206	0.414		
Feb-99	19	1,656,058,202,765	87,160,958,040	-0.129		
Mar-99	23	1,908,967,664,074	82,998,594,090	-0.049		
Apr-99	21	2,177,601,770,622	103,695,322,411	0.223		
May-99	20	1,784,400,906,987	89,220,045,349	-0.150		
Jun-99	22	1,697,339,227,503	77,151,783,068	-0.145		
Jul-99	21	1,767,035,098,986	84,144,528,523	0.087		
Aug-99	22	1,692,907,150,726	76,950,325,033	-0.089		
Sep-99	21	1,730,505,881,178	82,405,041,961	0.068		
Oct-99	21	2,017,474,765,542	96,070,226,931	0.153		
Nov-99	21	2,348,374,009,334	111,827,333,778	0.152		
Dec-99	22	2,686,788,531,991	122,126,751,454	0.088		
Jan-00	20	3,057,831,397,113	152,891,569,856	0.225		
Feb-00	20	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		

Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,839,174,160	129,091,958,708	0.060		
Feb-05	19	2,532,202,396,053	133,273,810,319	0.032		
Mar-05	22	3,030,474,095,010	137,748,822,500	0.033		
Apr-05	21	2,906,386,858,222	138,399,374,201	0.005		
May-05	21	2,697,406,551,792	128,447,931,038	-0.075		
Jun-05	22	2,825,792,932,509	128,445,133,296	0.000		
Jul-05	20	2,603,995,025,602	130,199,751,280	0.014		
Aug-05	23	2,846,109,434,770	123,743,888,468	-0.051		
Sep-05	21	3,009,608,583,531	143,314,694,454	0.147		
Oct-05	21	3,279,930,784,463	156,187,180,213	0.086		
Nov-05	21	3,163,288,362,669	150,632,779,175	-0.036		
Dec-05	21	3,090,218,506,716	147,153,262,225	-0.023		
Jan-06	20	3,573,306,111,973	178,665,305,599	0.194		
Feb-06	19	3,313,973,129,190	174,419,638,378	-0.024		

Mar-06	23	3,807,374,752,084	165,538,032,699	-0.052		
Apr-06	19	3,257,448,631,999	171,444,664,842	0.035		
May-06	22	4,206,452,683,345	191,202,394,697	0.109		
Jun-06	22	3,993,966,132,543	181,543,915,116	-0.052		
Jul-06	20	3,339,657,248,277	166,982,862,414	-0.084		
Aug-06	23	3,410,343,285,403	148,275,795,018	-0.119		
Sep-06	20	3,407,481,301,776	170,374,065,089	0.139		
Oct-06	22	3,980,061,341,623	180,911,879,165	0.060		
Nov-06	21	3,933,440,096,959	187,306,671,284	0.035		
Dec-06	20	3,715,147,836,319	185,757,391,816	-0.008		
Jan-07	20	4,264,649,474,786	213,232,473,739	0.138		
Feb-07	19	3,950,170,956,843	207,903,734,571	-0.025		
Mar-07	22	5,243,560,316,501	238,343,650,750	0.137		
Apr-07	20				243,433,544,609	4,868,670,892,189
May-07	22				248,632,134,545	5,469,906,959,979
Jun-07	21				253,941,741,790	5,332,776,577,584
Jul-07	21				259,364,737,150	5,446,659,480,150
Aug-07	23				264,903,542,060	6,092,781,467,373
Sep-07	19				270,560,629,663	5,140,651,963,603
Oct-07	23				276,338,525,920	6,355,786,096,164
Nov-07	21				282,239,810,732	5,927,036,025,374
Dec-07	20				288,267,119,095	5,765,342,381,910
Jan-08	21				294,423,142,278	6,182,885,987,831
Feb-08	20				300,710,629,019	6,014,212,580,378
Mar-08	20				307,132,386,759	6,142,647,735,187
Apr-08	22				313,691,282,893	6,901,208,223,647
May-08	21				320,390,246,048	6,728,195,167,003
Jun-08	21				327,232,267,393	6,871,877,615,256
Jul-08	22				334,220,401,976	7,352,848,843,471
Aug-08	21				341,357,770,084	7,168,513,171,771
Sep-08	21				348,647,558,641	7,321,598,731,463

Figure B.

Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

[FR Doc. 07–2194 Filed 5–4–07; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55683; File No. SR–ISE–2006–77]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval to Proposed Rule Change, as Modified by Amendment No. 1, Relating to Penny Increments for Block Mechanism Orders

April 30, 2007.

I. Introduction

On December 13, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow orders to be entered into the Block Mechanism in penny increments and to receive executions in penny increments. On March 19, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on March 27, 2007.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange currently offers a Block Mechanism for the execution of single-sided, block-sized orders.[4] The Block Mechanism exposes orders of at least 50 contracts to all ISE members for three seconds, giving members an opportunity to respond with contra-side trading interest for their own account or on behalf of their customers.[5] Currently, orders may be entered and executed using the Block Mechanism at the standard 5 and 10 cent increments and at ''split prices'' (2.5 cents for options trading in 5 cent standard increments and 5 cents for options trading in 10 cent standard increments). The Exchange proposes to amend ISE Rule 716 to allow these orders to be entered and executed in penny increments. Such orders would no longer be permitted to be executed at split prices.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts, 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. Specifically, the Commission believes that the proposed rule change is consistent with the Act because it will provide greater flexibility in the pricing of block-size orders and enhanced opportunities for block-size orders to receive price improvement.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ISE–2006–77), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8597 Filed 5–4–07; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55678; File No. SR–NASDAQ–2007–044]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Nasdaq Trading Rights Fee

April 27, 2007.

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 April 25, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, as establishing or changing a member due, fee, or other charge, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to increase the monthly trading rights fee paid by Nasdaq members. Nasdaq will implement this proposed rule change on May 1, 2007. The text of the proposed rule change is available at Nasdaq, *http://www.nasdaq.com*, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is increasing its monthly trading rights fee, which is assessed on all Nasdaq members, from $200 to $500 per month. The fee had initially been set at a level to ease the transition of the Nasdaq Market Center's status as a facility of the NASD to a facility of a new self-regulatory organization (''SRO''). Now that Nasdaq has an established membership base, Nasdaq believes that the fee increase is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55493 (March 20, 2007), 72 FR 14315.

[4] *See* ISE Rule 716(c).

[5] Supplementary Material .03 to ISE Rule 716 prohibits members from entering Responses for the account of an options market maker from another options exchange. This is the only limitation regarding who may enter Responses.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 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).

warranted to ensure that its monthly and annual membership fees fund a greater portion of the cost of regulating the Nasdaq market. Nasdaq believes that even with the fee increase, the cost of Nasdaq membership is generally lower than the cost of membership in other SROs.[5] In this regard, it is particularly notable that unlike other SROs, Nasdaq does not charge annual registration fees for each of a firm's registered representatives.

Nasdaq is also deleting language from Rule 7001 that waived the application fee for NASD members applying for Nasdaq membership prior to August 1, 2006.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that an increased monthly trading rights fee is a reasonable and equitable method of ensuring that its monthly and annual membership fees fund a greater portion of the cost of regulating the Nasdaq market, and that the overall cost of Nasdaq membership is reasonable as compared with the cost of membership in other SROs.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received form Members, Participants, or Others

Written comments were neither solicited nor received.

[5] *See, e.g.*, New York Stock Exchange Price List 2007 at *http://www.nyse.com/pdfs/2007pricelist.pdf* (itemizing numerous registration, regulation, and trading rights fees); NASD By-Laws Schedule A, Section 1 at *http://nasd.complinet.com/n nasd/display/display.html?rbid=1189&element_id=1159000126*; Chicago Stock Exchange Fees and Assessments at *http://wallstreet.cch.com/CHXtools/PlatformViewer.asp?SelectedNode=chp_1_1&manual=/CHX/Admin/chx-feesandassessments/*.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) thereunder,[9] in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2007–044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq.

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–NASDAQ–2007–044 and should be submitted on or before May 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8596 Filed 5–4–07; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55687; File No. SR–NYSE–2007–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 to Proposed Rule Change and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, To Adopt Generic Listing Standards for Index-Linked Securities

May 1, 2007.

I. Introduction

On March 9, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt generic listing standards for equity index-linked securities (''Equity Index-Linked Securities''), commodity-linked securities (''Commodity-Linked Securities''), and currency-linked securities (''Currency-Linked Securities'' and, together with Equity Index-Linked Securities and Commodity-Linked Securities, ''Index-Linked Securities''). On April 4, 2007, Exchange filed Amendment No. 1 to the proposed rule change. On April 5, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

April 13, 2007 for a 15-day comment period.[3] The Commission received no comments on the proposal. On April 26, 2007, the Exchange filed Amendment No. 3 to the proposed rule change.[4] This order approves the proposed rule change, as modified by Amendments No. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal

As explained more fully in the Notice, the Exchange proposes to add new Section 703.22 to its Listed Company Manual (the ''Manual'') to provide generic listing standards to permit the listing and trading of Index-Linked Securities pursuant to Rule 19b–4(e) under the Act.[5] This proposal will enable the Exchange to list and trade Index-Linked Securities pursuant to Rule 19b–4(e) of the Act if each of the conditions set forth in proposed Section 703.22 of the Manual is satisfied. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[6]

Index-Linked Securities

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing (the ''Underlying Index'' or ''Underlying Indexes''). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year, but not greater than thirty years, and are tied to the performance of the Underlying Index. Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes to the holder during their term. Despite the fact that Index-Linked Securities are linked to an Underlying Index, each will trade as a single, exchange-listed security.

The proposed generic listing standards will not be applicable to Index-Linked Securities with respect to which the payment at maturity is based on a multiple of the negative performance of an Underlying Index or Indexes. An Index-Linked Security may or may not provide ''principal protection,'' *i.e.*, a minimum guaranteed amount to be repaid.[7] In addition, Index-Linked Securities do not give the holder any right to receive a portfolio component, dividend payments, or any other ownership right or interest in the portfolio or underlying components comprising the Underlying Index. Pursuant to proposed Section 703.22 of the Manual, the current or composite value of the Underlying Index will be widely disseminated at least every 15 seconds during the trading day.

Proposed General Listing Criteria for Index-Linked Securities

The Exchange will apply the following requirements to all issuers of Index-Linked Securities:

- If the issuer is a NYSE-listed company, the entity must be a company in good standing (*i.e.*, meets NYSE's applicable continued listing criteria); if the issuer is an affiliate of a NYSE-listed company, the NYSE-listed company must be a company in good standing; if not listed, the issuer must meet the size and earnings requirements of Sections 102.01–102.03 or Sections 103.01–103.05 of the Manual. Sovereign issuers will be evaluated on a case-by-case basis.
- The issuer will be expected to have a minimum tangible net worth [8] of $250,000,000. In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of $150,000,000 and (ii) not to issue Index-Linked Securities, the original issue price of which, combined with all the issuer's other Index-Linked Securities listed on a national securities exchange, exceeds 25% of the issuer's tangible net worth at the time of issuance.[9]
- The issuer must be in compliance with Rule 10A–3 under the Act.[10]

In addition, the Exchange will apply the following requirements to each issue of Index-Linked Securities:

- The issue must have a minimum public distribution of at least 1 million units and a minimum of 400 holders, except if traded on the NYSE Bonds system and the applicable NYSE Bonds listing and trading standards are satisfied; [11]
- The issue must have a principal amount/aggregate market value of not less than $4 million;
- The issue must have a term of at least one year, but not greater than thirty years;
- The issue must be the non-convertible debt of the issuer; and
- The issue must not base its payment at maturity on a multiple of the negative performance of an Underlying Index or Indexes, although the payment at maturity may or may not provide for a multiple of the positive performance of an Underlying Index or Indexes.

Listing Standards for Equity Index-Linked Securities

Equity Index-Linked Securities would be subject to the criteria in proposed Section 703.22(B)(I) of the Manual for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Equity Index-Linked Security, such Underlying Index must comprise at least ten component securities of different issuers. The Underlying Index must also either: (i) Be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act [12] and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing

[3] *See* Securities Exchange Act Release No. 55600 (April 9, 2007), 72 FR 18712 (''Notice'').

[4] In Amendment No. 3 to the proposed rule change, the Exchange clarified the eligibility criteria for component securities comprising the Underlying Index (as defined herein) for Equity Index-Linked Securities, broadened the requirement for surveillance procedures, including adequate comprehensive surveillance sharing agreements, for all Index-Linked Securities, and represented that Exchange trading rules governing the Index-Linked Securities would be identified and disclosed in the Information Memorandum.

[5] *See* 17 CFR 240.19b–4(e)(1).

[6] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[7] Some Index-Linked Securities may provide for ''contingent'' protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain predetermined level.

[8] ''Tangible net worth'' is defined as total assets, *less* intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights, and trademarks.

[9] If the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange will rely on such affiliate's tangible net worth for purposes of these requirements and will include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate.

[10] *See* 17 CFR 240.10A–3 (setting forth the listing standards relating to audit committees).

[11] *See* NYSE Rule 86 (establishing rules and standards with respect to the Exchange's electronic system, known as ''NYSE Bonds,'' for receiving, processing, executing, and reporting bids, offers, and executions in bonds). In addition, this requirement will not be applicable if the issue provides for the redemption of Index-Linked Securities at the option of the holders on at least a weekly basis. *See* Notice, *supra* note 3, 72 FR at 18713 (describing the purpose of weekly redemption rights of Index-Linked Securities and the rationale behind this exception to the minimum holder requirement).

[12] 15 U.S.C. 78s(b)(2).

agreements for non-U.S. stocks, continue to be satisfied, or (ii) satisfy certain eligibility standards, rebalancing obligations, and empirical requirements based on market value, trading volume, and dollar weight percentages.[13] In particular, all component securities comprising the Underlying Index for Equity Index-Linked Securities must either be: (A) securities (other than foreign country securities and American Depository Receipts (''ADRs''), that are (1) issued by an Act reporting company which is listed on a national securities exchange and (2) NMS stocks, as defined in Rule 600 of Regulation NMS,[14] or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (''ISG'') or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the Underlying Index.

In connection with an Equity Index-Linked Security, the Exchange would commence delisting or removal proceedings if any of the standards set forth in the initial eligibility criteria are not continuously maintained[15] or an Underlying Index fails to satisfy the maintenance standards or conditions for such Underlying Index or Indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act[16] approving the Underlying Index for the trading of options or other derivatives. The Exchange would also commence delisting or removal proceedings of an Equity Index-Linked Security if: (1) The aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than $400,000; (2) the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis during the time the Equity Index-Linked Securities trade on the Exchange; or (3) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Listing Standards for Commodity-Linked and Currency-Linked Securities

Commodity-Linked and Currency-Linked Securities would be subject to the criteria in proposed Sections 703.22(B)(II) and 703.22(B)(III) of the Manual, respectively, for initial and continued listing. Each issue of Commodity-Linked or Currency-Linked Securities must meet either of the following initial listing standards:

- The Commodity Reference Asset[17] or Currency Reference Asset,[18] as the case may be, to which the corresponding security is linked shall have been reviewed and approved for the trading of Commodity Trust Shares (in the case of Commodity-Linked Securities) or Currency Trust Shares (in the case of Currency-Linked Securities), options, or other derivatives by the Commission under Section 19(b)(2) of the Act[19] and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for each component of a Commodity Reference Asset or Currency Reference Asset, as the case may be, must be derived from certain required sources.[20]

With respect to each of the Commodity-Linked and Currency-Linked Securities, the value of the Commodity Reference Asset or Currency Reference Asset, as the case may be, must be calculated and widely disseminated on at least a 15-second basis during the time the corresponding Commodity-Linked or Currency-Linked Securities trade on the Exchange. In addition, if the Commodity-Linked or Currency-Linked Securities are periodically redeemable, the indicative value of the subject Commodity-Linked or Currency-Linked Securities, as the case may be, must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time such securities trade on the Exchange.

The Exchange would commence delisting or removal proceedings if any of the initial listing criteria described above for each of the Commodity-Linked or Currency-Linked Securities, as applicable, is not continuously maintained. Notwithstanding the foregoing, an issue of Commodity-Linked or Currency-Linked Securities would not be delisted for a failure to have in place comprehensive surveillance sharing agreements if the Commodity Reference Asset or Currency Reference Asset, as the case may be, has at least 10 components, and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of such Commodity Reference Asset or Currency Reference Asset. The Exchange would also commence delisting or removal proceedings if: (1) The aggregate market value or the principal amount of the Commodity-Linked or Currency-Linked Securities publicly held is less than $400,000; (2) the value of the Commodity Reference Asset or Currency Reference Asset, as the case may be, is no longer calculated or available and a new corresponding Commodity or Currency Reference Asset is substituted, unless the new corresponding Commodity or Currency Reference Asset meets the requirements of proposed Section 703.22; or (3) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Exchange Rules Applicable to Index-Linked Securities

Index-Linked Securities traded on the Exchange's equity trading floor will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules and the Exchange's regular trading hours (9:30 a.m. to 4 p.m. Eastern Time) will apply to transactions in Index-Linked Securities. However, Index-Linked Securities traded on the NYSE Bonds system will be subject to the rules applicable to such securities traded on that system.

Information Memorandum

The Exchange represents that it will prepare and distribute, if appropriate,

[13] *See* Notice, *supra* note 3, 72 FR at 18713–18714 (providing, among others, detailed eligibility requirements of the component securities comprising the Underlying Index based on minimum market value, trading volume, and certain dollar weight percentages).

[14] *See* 17 CFR 242.600(b)(47).

[15] Proposed Section 703.22 of the Manual provides for certain exceptions to the continued listing criteria of Equity Index-Linked Securities based on certain numerical requirements and percentages with respect to the component securities comprising the Underlying Index. *See* Notice, *supra* note 3, 72 FR at 18714.

[16] 15 U.S.C. 78s(b)(2).

[17] Commodity Reference Asset is defined as one or more physical commodities or commodity futures, options, or other commodity derivatives, Commodity Trust Shares (as defined in NYSE Rule 1300B), or a basket or index of any of the foregoing.

[18] Currency Reference Asset is defined as one or more currencies, or options, currency futures, or other currency derivatives, Currency Trust Shares (as defined in NYSE Rule 1300A), or a basket or index of any of the foregoing.

[19] 15 U.S.C. 78s(b)(2).

[20] In the case of a Commodity Reference Asset, the pricing information for each component thereof must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. In the case of a Currency Reference Asset, the pricing information for each component thereof must be either (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market which (a) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (b) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

an Information Memorandum that describes the product to each member organization highlighting the particular structure and corresponding risks of an Index-Linked Security. In particular, the Memorandum will set forth the Exchange's suitability rule that sets forth certain requirements for member organizations recommending a transaction in Index-Linked Securities. In addition, the Information Memorandum will note that all of the Exchange's equity trading rules will be applicable to trading in the Index-Linked Securities, except in the case of Index-Linked Securities traded on the NYSE Bonds system, in which case the Information Memorandum will note that the Index-Linked Securities will be subject to the trading rules applicable to securities trading on such system. The Memorandum will also reference the member requirements to deliver a prospectus to each investor purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction.

Surveillance

The Exchange represents that it will closely monitor activity in Index-Linked Securities to identify and deter any potential improper trading activity in such securities. Additionally, the Exchange states that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds. The Exchange represents that it has developed procedures to closely monitor activity in Index-Linked Securities and the Underlying Indexes and their components to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the components of the Underlying Indexes in relation to Index-Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Firewall Procedures

For Index-Linked Securities where the Underlying Index is maintained by a broker-dealer, the broker-dealer will be required to erect a ''firewall'' around the personnel responsible for the maintenance of the Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index, and the Underlying Index will be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator (each as defined in NYSE Rule 1100, Supplementary Material .10) or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters would be required to implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable Underlying Index or portfolio.[21]

Trading Halts

In the case of Commodity-Linked or Currency-Linked Securities, if the indicative value or the Commodity Reference Asset value or Currency Reference Asset value, as the case may be, applicable to a corresponding series of such securities is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the Underlying Index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

A. Generic Listing Standards for Index-Linked Securities

To list and trade Index-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act[24] and Rule 19b–4 thereunder.[25] However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Index-Linked Securities pursuant to Rule 19b–4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b–4(e) to list and trade Index-Linked Securities that meet the requirements of proposed Section 703.22 of the Manual should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making Index-Linked Securities available to investors more quickly.

The Commission has previously approved generic listing standards pursuant to Rule 19b–4(e) for Index-Linked Securities based on indexes that consist of domestic, and to a certain extent, foreign, equity securities.[26] The Commission has also previously approved the listing and trading on the Exchange of debt securities linked to the performance of a variety of commodities

[21] The Exchange states that NYSE Rules 1300B(b) and Rule 1301B provide for certain conflict-of-interest restrictions on specialist firms transacting in components of a Commodity Reference Asset, or any derivative instrument thereon, with respect to any issue of Commodity-Linked Securities. Similarly, a proposed rule change to NYSE Rules 1300A and 1301A seeks to impose similar restrictions on specialist firms for any issue of Currency-Linked Securities. *See* Securities Exchange Act Release No. 55222 (February 1, 2007), 72 FR 6021 (February 8, 2007) (SR–NYSE–2006–68).

[22] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 23 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(1).

[25] 25 17 CFR 240.19b–4.

[26] *See, e.g.*, Securities Exchange Act Release No. 54167 (July 18, 2006), 71 FR 42145 (July 25, 2006) (SR–NASDAQ–2006–002) (approving Rule 4420(m) of the NASDAQ Stock Market LLC); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63) (approving generic listing standards for index-linked securities for the Pacific Exchange, Inc., n/k/a NYSE Arca, Inc.); and Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR–Amex–2005–001) (approving Section 107(D) of the American Stock Exchange LLC *Company Guide*).

and commodity indexes [27] and derivative products based on currencies.[28] In approving these securities for Exchange trading, the Commission considered applicable Exchange rules that govern their trading. The Commission believes that generic listing standards for Index-Linked Securities should fulfill the intended objective of Rule 19b–4(e) and allow Index-Linked Securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.[29]

B. Listing and Trading Index-Linked Securities

Taken together, the Commission finds that the NYSE proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Securities listed pursuant to Rule 19b–4(e) on the Exchange. All Index-Linked Security products listed under the proposed generic standards will be subject to the full panoply of NYSE rules and procedures that currently govern the trading of equity securities on the Exchange.

As set forth more fully above, NYSE has proposed size, earnings, and minimum tangible net worth requirements for each Index-Linked Security issuer, as well as minimum distribution and holder, principal amount/market value, and minimum term thresholds for each issuance of Index-Linked Securities. The Exchange's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for each Equity Index-Linked Security and the components underlying each such security. For Commodity-Linked and Currency-Linked Securities, the assets (or their derivatives) to which they are linked must either have been reviewed and approved for trading by the Commission or their pricing information must be derived from certain required sources.[30] These requirements are designed to ensure that the trading markets for the Underlying Index components are adequately capitalized and sufficiently liquid, and that, in the case of Equity Index-Linked Securities, no one component dominates the Underlying Index. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission also finds that, in the case of Commodity-Linked and Currency-Linked Securities with at least 10 components, the requirement that at least 90% of the dollar weight of the corresponding Commodity Reference Asset or Currency Reference Asset, as the case may be, must have comprehensive surveillance sharing agreements with the Exchange should permit the Exchange to identify potential trading and other violations of its rules. In the case of Equity Index-Linked Securities, each component security (other than foreign country securities and ADRs) must be issued by a reporting company under the Act, listed on a national securities exchange, and be an ''NMS stock,'' as such term is defined in Rule 600 of Regulation NMS.[31] The Commission believes that such a requirement will contribute to the transparency of the Underlying Index. Alternatively, such component securities may also be foreign country securities, including foreign country securities underlying ADRs, so long as the foreign country securities having their primary trading market on foreign markets that are not ISG members or parties to comprehensive surveillance agreements with the Exchange do not, in the aggregate, represent more than 20 percent of the dollar weight of the Underlying Index. The Commission also believes that, with respect to Equity Index-Linked Securities, the requirement that at least 90 percent of the component securities, by dollar weight, and 80 percent of the total number of component securities, be eligible individually for options trading should prevent an Index-Linked Security from being a vehicle for trading options on a security not otherwise options eligible. The Commission also notes that, by requiring pricing information for the relevant Underlying Index or Indexes to be readily available, the proposed listing standards of Section 703.22 of the Manual should help ensure a fair and orderly market for Index-Linked Securities listed and traded pursuant to Rule 19b–4(e).

The Exchange has also developed delisting criteria that will permit it to suspend trading of an Index-Linked Security in circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each Index-Linked Security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the Underlying Index or, in the case of Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the indicative value, is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

C. Surveillance

The Commission notes that any Index-Linked Securities approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it has developed to closely monitor activity in Index-Linked Securities and the Underlying Indexes and their components. The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities listed pursuant to these proposed generic listing standards. In addition, the Commission notes that the Exchange has represented that it will be able to obtain trading and beneficial holder information from the primary trading markets for the components of the Underlying Indexes in relation to Index-Linked Securities, either pursuant

[27] *See, e.g.*, Securities Exchange Release No. 55548 (March 28, 2007), 72 FR 16392 (April 4, 2007) (SR–NYSE–2006–71) (approving a proposal to list and trade notes linked to the performance of sub-indices of the Dow Jones-AIG Commodity Index); Securities Exchange Release No. 54731 (November 9, 2006), 71 FR 66814 (November 16, 2006) (SR–NYSE–2006–54) (approving the listing and trading of two series of commodity-linked securities); Securities Exchange Release No. 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR–NYSE–2006–19) (approving the listing and trading of index-linked notes linked to the performance of the Goldman Sachs Crude Oil Total Return Index); Securities Exchange Release No. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR–NYSE–2006–20) (approving the listing and trading of index-linked securities linked to the performance of the GSCI Total Return Index); and Securities Exchange Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR–NYSE–2006–16) (approving the listing and trading of index-linked securities linked to the performance of the Dow Jones-AIG Commodity Index Total Return).

[28] *See, e.g.*, Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR–NYSE–2007–03) (approving the listing and trading of Currency Trust Shares relating to the Japanese Yen); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR–NYSE–2006–35) (approving the listing and trading of six Currency Trust Shares); and Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65) (approving the listing and trading of Euro Shares).

[29] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

[30] *See supra* note 20 and accompanying text.

[31] 17 CFR 240.600(b)(47).

to bilateral information sharing agreements with those markets or because those markets are full members or affiliate members of the ISG. In particular, the Exchange has represented that it will implement adequate comprehensive surveillance sharing agreements for non-U.S. components, as applicable.

D. Information Memorandum

The Exchange has represented that it will distribute, as appropriate, an Information Memorandum to members describing the product, the structure of the product, and the corresponding risks of the Index-Linked Security. In addition, the Information Memorandum will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index-Linked Securities to customers and the prospectus delivery requirements. The Memorandum will also identify and describe the Exchange's trading rules governing the Index-Linked Securities.

E. Firewall Procedures

The Exchange has further represented that, if the Underlying Index is maintained by a broker-dealer, such broker-dealer will establish a ''firewall'' around personnel responsible for the maintenance of the Underlying Index. As an added measure, a third-party who is not a broker-dealer will calculate the Underlying Index. In addition, the Exchange has stated that any person, committee, board, or similar entity that advises the Index Licensor or Administrator (each as defined in NYSE Rule 1100, Supplementary Material .10) or that makes decisions regarding the composition and methodology of the Underlying Index, will be subject to policies and procedures designed to prevent the use and dissemination of material, non-public information. With respect to trading on NYSE, the Exchange has stated that, with respect to any issue of Index-Linked Securities, specialists will be restricted from making markets in and trading components of the Underlying Securities or any derivative instruments thereof.[32]

F. Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendments No. 1, 2, and 3 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Exchange requested accelerated approval of the proposal to facilitate the prompt listing and trading of Index-Linked Securities based on indexes or portfolios meeting the specified criteria of proposed Section 703.22 of the Manual. The Commission notes that the Exchange's proposed generic listing standards are based, in part, on previously approved listing standards for Index-Linked Securities based on an Underlying Index made up of equity securities.[33] The Commission also notes that it has previously approved the listing and trading of derivative products based on commodities and currencies.[34] The Commission believes that accelerated approval of the proposed rule change should expedite the listing and trading of additional Index-Linked Securities, subject to the standards discussed herein, to the benefit of the investing public. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[35] to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–27 and should be submitted on or before May 29, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSE–2007–27), as modified by Amendments No. 1, 2, and 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8600 Filed 5–4–07; 8:45 am]

BILLING CODE 8010–01–P

[32] *See supra* note 21.

[33] *See supra* note 26.

[34] *See supra* notes 27–28.

[35] 15 U.S.C. 78s(b)(2).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10854]

Iowa Disaster #IA–00007 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Iowa, dated 04/27/2007.

Incident: Winter Storms.

Incident Period: 02/23/2007 through 03/02/2007.

EFFECTIVE DATE: 04/27/2007.

EIDL Loan Application Deadline Date: 01/28/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street, SW, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Bremer, Crawford, Grundy, Hardin, Iowa, Jasper, Mahaska, Marshall, Mitchell, Poweshiek, Scott, Shelby.

Contiguous Counties:

Iowa: Audubon, Benton, Black Hawk, Buchanan, Butler, Carroll, Cass, Cedar, Cerro Gordo, Chickasaw, Clinton, Fayette, Floyd, Franklin, Hamilton, Harrison, Howard, Ida, Johnson, Keokuk, Linn, Marion, Monona, Monroe, Muscatine, Polk, Pottawattamie, Sac, Story, Tama, Wapello, Washington, Woodbury, Worth, Wright.

Illinois: Rock Island.

Minnesota: Mower.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 108540.

The States which received an EIDL Declaration # are Iowa, Illinois and Minnesota.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: April 27, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–8594 Filed 5–4–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10857 and # 10858]

New Hampshire Disaster # NH–00004

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1695–DR), dated 04/27/2007.

Incident: Severe Storms and Flooding.

Incident Period: 04/15/2007 and continuing.

EFFECTIVE DATE: 04/27/2007.

Physical Loan Application Deadline Date: 06/26/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 01/28/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/27/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Grafton, Hillsborough, Merrimack, Rockingham, Strafford.

Contiguous Counties (Economic Injury Loans Only):

New Hampshire:

Belknap, Carroll , Cheshire, Coos, Sullivan.

Massachusetts:

Essex, Middlesex, Worcester.

Maine:

York.

Vermont:

Caledonia, Essex, Orange, Windsor.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 108576 and for economic injury is 108580.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–8601 Filed 5–4–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10855 and #10856]

New Jersey Disaster Number NJ–00006

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1694–DR), dated 04/26/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/14/2007 through 04/20/2007.

EFFECTIVE DATE: 04/27/2007.

Physical Loan Application Deadline Date: 06/25/2007.

EIDL Loan Application Deadline Date: 01/28/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of NEW JERSEY, dated 04/26/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Middlesex, Morris, Hudson.

Contiguous Counties: New Jersey:

Warren.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–8602 Filed 5–4–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5792]

Bureau of Educational and Cultural Affairs; International Visitor Leadership Program Assistance Awards

AGENCY: Department of State.

ACTION: Amendment to original RFGP.

SUMMARY: The United States Department of State, Bureau of Educational and

Cultural Affairs, announces revisions to the original RFGP announced in the **Federal Register** on Thursday, April 19, 2007 (**Federal Register** Vol. 72, No. 75):

IV.3e.1. Applicants must provide a detailed budget for administrative expenses only. Administrative costs are those costs that include applicant's staff salaries, benefits, telephone, fax, printing, office supplies, etc. All overhead costs associated with the program (for supervision, financial management, and other overhead expenses) are to be included in the proposal and should be controlled, reduced, or shared. The costs of support/central office in any parent agency (whether covered through an indirect costs' rate or as a direct cost) should be limited or cost shared to the extent possible. Concrete plans to streamline operations covered by overhead and non-program staff functions should be described in proposal submissions. (See Budget Guidelines in the PSI document.)

Additional Information

Interested organizations should contact Michelle Lampher, Chief, Community Resources Division, Office of International Visitors, Bureau of Educational and Cultural Affairs, U.S. Department of State, ECA/PE/V/C SA–44, Rm 247, 301 4th Street, SW., Washington, DC 20547, prior to Tuesday, June 12, 2007.

Dated: May 1, 2007.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E7–8684 Filed 5–4–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5760]

U.S. National Commission for UNESCO; Notice of Annual Meeting

SUMMARY: The Annual Meeting of the U.S. National Commission for the United Nations Educational, Scientific, and Cultural Organization (UNESCO) will take place on Monday, May 21, 2007 and Tuesday, May 22, 2007, at the Marriott Georgetown University Conference Hotel, Washington, DC (3800 Reservoir Road, NW.). The theme of this year's Annual Meeting is ''UNESCO as a Capacity Builder: Pursuing its mandate through Education, the Sciences, Culture, and Communications.'' On Monday, May 21 from 9 a.m. to 12 p.m. and from 2:15 p.m. to 5 p.m. and on Tuesday, May 22 from 9 a.m. to 12 p.m., the Commission will hold a series of informational plenary sessions and subject-specific committee breakout sessions, which will be open to the public. On Tuesday, May 22, 2007, the Commission will meet from 1:45 p.m. until 4 p.m. to discuss recommendations on the meeting's theme and other UNESCO-related issues. Members of the public who wish to attend any of these meetings should contact the U.S. National Commission for UNESCO no later than Wednesday, May 16th for further information about admission, as seating is limited. Those who wish to make oral comments during the public comment section held during the concluding session Tuesday afternoon should request to be scheduled by Wednesday, May 16th. Each individual will be limited to five minutes, with the total oral comment period not exceeding thirty minutes. Written comments should be submitted by Monday, May 14th to allow time for distribution to the Commission members prior to the meeting. The National Commission may be contacted via e-mail at *DCUNESCO@state.gov,* or via phone at (202) 663–0026. Its Web site can be accessed at: *http://www.state.gov/p/io/unesco/*.

Dated: May 1, 2007.

Susanna Connaughton,

U.S. National Commission for UNESCO, Department of State.

[FR Doc. E7–8687 Filed 5–4–07; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Finding of No Significant Impact (FONSI) (New), St. Marys Airport, St. Marys, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) Atlanta Airports District Office on March 27, 2007, issued a Finding of No Significant Impact for proposed construction of a replacement airport at St. Marys, Georgia. Copies of the FONSI are available for review by the public for thirty (30) days at the following location: Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Ave., Campus Building 2–260, College Park, Georgia 30337.

Scott Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 07–2209 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27333]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 21 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 7, 2007. The exemptions expire on May 7, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of

an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov*.

Background

On March 16, 2007, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (72 FR 12666). That notice listed 21 applicants' case histories. The 21 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 21 applications on their merits and made a determination to grant exemptions to 21 of them. The comment period closed on April 16, 2007.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 21 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular scar, retinal detachment, prosthesis, corneal opacity, optic nerve injury, histoplasmosis syndrome, choroidal rupture and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but five of the applicants were either born with their vision impairments or have had them since childhood. The five individuals who sustained their vision conditions as adults have had them for periods ranging from 6 to 36 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 21 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 6 to 36 years. In the past 3 years, two of the drivers have had convictions for traffic violations and none of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 16, 2007 notice (72 FR 12666).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 21 applicants, two of the applicants had traffic violations for speeding. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to 21 of the applicants listed in the notice of March 16, 2007 (72 FR 12666).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 21 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 21 exemption applications, FMCSA exempts Rex A. Botsford, Robert A. Casson, Gregory L. Cooper, Kenneth D. Craig, Thomas H. Davenport, Sr., Christopher A. Deadman, Heather M.B. Gordon, William K. Gullett, George Harris, Kenneth C. Keil, Robert K. Kimbel, Melvin A. Kleman, Roosevelt Lawson, Jr., David H. Luckadoo, Emanuel N. Malone, Robert E. Martinez, Richard W. Mullenix, Steven A. Proctor, George K. Sizemore, Robert N. Taylor, and Manuel A. Vargas from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 30, 2007.

Larry W. Minor,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E7–8637 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2007–27111; Notice 2]

Baby Trend, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance

Baby Trend Inc. (Baby Trend) has determined that certain infant car seats that it produced in 2006 do not comply with paragraph S5.6.1.7(i) of 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Baby Trend has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Notice of receipt of a petition was published, with a 30-day public comment period, on February 16, 2007, in the **Federal Register** (72 FR 7708). The National Highway Traffic Safety Administration (NHTSA) received no comments. To view the petition and all supporting documents, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter Docket No. NHTSA–2007–27111.

Affected are a total of approximately 30,450 infant car seats produced by Baby Trend between June 21, 2006 and November 30, 2006. Specifically, paragraph S5.6.1.7(i) of FMVSS No. 213 addresses the use of the following statement on child restraints:

> For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov*.

The infant car seats do not have the markings most recently required by paragraph S5.6.1.7. Baby Trend has corrected the problem that caused these errors so that they will not be repeated in future production.

Baby Trend argued that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Baby Trend stated that the child restraint seats comply with the stringent dynamic performance requirements of FMVSS No. 213. Baby Trend also asserted that no safety consequence exists for the technical labeling non-compliance. Further, they believe that given the existing lag time, the use of the older version of the information remains a viable means for contacting the NHTSA. Although telephone exchanges have changed, NHTSA still forwards calls in an integrated manner to provide

consumer service to the general population. In addition, Baby Trend states that the use of the internet, improvements to NHTSA's Web sites and the implementation of the integrated *http://www.recall.gov* Web site allows consumers interested in contacting NHTSA to do so more effectively than ever before.

NHTSA Decision

NHTSA specifies that child seat manufacturers must provide the telephone number for the Vehicle Safety Hotline so that consumers concerned about safety recalls or potential safety related defects could contact the agency. That telephone number has been changed. A final rule published on June 21, 2005, in the **Federal Register** (70 FR 3556) revised the relevant section of the Code of Federal Regulations (CFR) to correct the telephone number. In that same final rule, NHTSA also added guidance related to the use of the URL of the NHTSA Web site on printed instructions for the proper use of infant car seats.

Although the Hotline number included in the printed instructions for the Baby Trend infant car seats is not the correct number for the Hotline, it is an active number which currently provides callers with a referral to the new Hotline number. This referral from the old number will be active for the foreseeable future. Inclusion of the NHTSA Web site address in the printed instructions for proper use is optional and its absence on the printed instructions for the subject infant child seats does not constitute a noncompliance of FMVSS No. 213. NHTSA therefore agrees with Baby Trend that there is no safety consequence because consumers will still have ready access to the new Hotline number by calling the old Hotline number provided by Baby Trend.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety. The use of the outdated telephone number should not prevent the owners of the child seats from being able to readily access recall information.

In consideration of the foregoing, NHTSA has decided that Baby Trend has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Baby Trend's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 1, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–8680 Filed 5–4–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35003]

BNSF Railway Company and Soo Line Railroad Company, Inc.—Joint Relocation Project Exemption—in Duluth, MN

On April 18, 2007,[1] BNSF Railway Company (BNSF) and Soo Line Railroad Company, Inc., d/b/a Canadian Pacific Railway (CPR), jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate and construct track within and around Rice's Point Yard between CPR mileposts 288.70 and 287.20, in Duluth, MN. BNSF and CPR will construct, maintain, repair and renew their own trackage and turnouts under the Duluth Public Works Project.

The purpose of the joint relocation project is to accommodate a new public roadway, Davis-Helberg Drive (also referred to as Helberg Drive), being constructed as part of a Port of Duluth improvement project.

The project consists of the following transactions:

(1) BNSF will grant CPR non-exclusive overhead trackage rights to operate its trains, locomotives, cars and equipment with its own crews over trackage owned and operated by BNSF located between Points C and D, a distance of approximately 825 feet. Point C is currently located at BNSF milepost 1.46 (CPR milepost 288.25) and, after construction, because of changes to the overall track configuration within the CPR track system, Point C will be designated CPR milepost 288.24. Point D is currently located at BNSF milepost 1.49 and, after construction, Point D will be designated as CPR milepost 287.91. These trackage rights are intended to enable CPR a direct run-through to bypass switches at Cargill (or its successor). BNSF will continue to operate over this segment.

(2) CPR will grant BNSF non-exclusive overhead trackage rights to operate its trains, locomotives, cars and equipment with its own crews over trackage owned and operated by CPR located between Points E and I, a distance of approximately 350 feet. After construction, Point E will be on new trackage to be designated as CPR milepost 287.75. Point I is located on crossover yard track between BNSF and CPR. There is no milepost designation for this yard track, but the end point of the trackage rights (Point I), is approximately 350 feet south of Point E. These trackage rights are intended to enable BNSF to continue to connect with the Duluth Seaway Port Authority, which includes serving AG Processing, Inc. (or its successor), Azcon (or its successor), and the Garfield Industrial area. CPR will continue to operate over this segment.[2]

(3) BNSF will grant CPR a freight easement on BNSF's property for the purchase, relocation and reconstruction of a portion of CPR's line between Points A and B (Point A being the westerly BNSF right-of-way near Point C) (easement), a distance of approximately 2,500 feet. Point A is currently located at BNSF milepost 1.61. After construction, Point A will be located on new trackage designated as CPR milepost 288.10, and Point B will be located on new trackage to be designated as CPR milepost 287.64.

Applicants state that the proposed project will not disrupt service to shippers, as applicants will continue to have access to the Port. Additionally, applicants state that the relocated line and trackage rights will not involve an expansion of service by BNSF or CPR into new territory, or alter the existing competitive situation.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—*

[1] The notice was initially filed on March 26, 2007. On April 3, 9, and 18, 2007, amendments were filed to more clearly identify the trackage involved in this proceeding. Because the notice was not complete until the April 18 filing, that date will be considered the actual filing date.

[2] Applicants state that the overhead reciprocal trackage rights will terminate 25 years from the execution date (initial term). Unless BNSF or CPR notifies the other in writing at least 6 months prior to the expiration of the initial term, the trackage rights may continue in full force and effect for up to 3 successive terms of 25 years each under the same terms and conditions. The parties must seek appropriate Board authority for the trackage rights to expire at the end of the initial term or at the end of the successive term or terms, as appropriate.

Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The earliest this transaction may be consummated is the May 18, 2007 effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than May 11, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35003, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representatives: Sidney L. Strickland, Jr., 3050 K Street, NW., Suite 101, Washington, DC 20007, and Leigh Currie, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 27, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–8541 Filed 5–4–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Secretary of the Treasury of the three entities identified in this notice pursuant to Executive Order 13382 is effective on February 16, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On February 16, 2007, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, designated three entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees follows:

1. KALAYE ELECTRIC COMPANY (a.k.a. KALA ELECTRIC COMPANY), 33 Fifteenth (15th) Street, Seyed-Jamal-Eddin-Assad Abadi Avenue, Tehran, (Iran) [NPWMD]

2. KAVOSHYAR COMPANY, (a.k.a. KAAVOSH YAAR; a.k.a. KAVOSHYAR), P.O. Box 19395–1834, Tehran (Iran); Vanaq Square, Corner of Shiraz Across No. 71, Molla Sadra Ave., Tehran, (Iran); No. 86, 20th St., North Karegar Ave., Tehran (Iran) [NPWMD]

3. PIONEER ENERGY INDUSTRIES COMPANY (a.k.a. PISHGAM ENERGY INDUSTRIES DEVELOPMENT; a.k.a. ''PEI''), P.O. Box 81465–361, Isfahan (Iran) [NPWMD]

Dated: April 9, 2007.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–8674 Filed 5–4–07; 8:45 am]

BILLING CODE 4811–22–P

Federal Register

Monday,
May 7, 2007

Part II

Department of Energy

Office of Electricity Delivery and Energy Reliability; Draft National Interest Electric Transmission Corridor Designations; Notice

DEPARTMENT OF ENERGY

Office of Electricity Delivery and Energy Reliability; Draft National Interest Electric Transmission Corridor Designations

[Docket No. 2007–OE–01, Draft Mid–Atlantic Area National Corridor; Docket No. 2007–OE–02, Draft Southwest Area National Corridor]

AGENCY: Department of Energy.

ACTION: Notice and opportunity for written and oral comment.

SUMMARY: Having issued the first National Electric Transmission Congestion Study under section 216 of the Federal Power Act (FPA), and having evaluated public comments on the Study, the Department of Energy (Department or DOE) today begins two proceedings that may lead to one or more orders designating one or more national interest electric transmission corridors (National Corridors). The Department believes that, although the FPA does not require it, allowing an opportunity for comment on draft National Corridor designations prior to the Department issuing its FPA section 216(a) report will aid both the public and the Department. Interested persons may file written comments in one or both of these proceedings in the manner indicated in the **ADDRESSES** portion of this notice. Only those persons who file such comments by the date listed in the **DATES** portion of this notice will become parties to the proceedings and, thus, eligible to file a request for rehearing under FPA section 313 of any final order issued in these proceedings.

DATES: Written comments on the draft National Corridors must be received on or before July 6, 2007.

The Department has scheduled public meetings on Docket No. 2007–OE–01 (the draft Mid-Atlantic Area National Corridor) for the following dates:

May 15, 2007, 10 a.m. to 3:30 p.m., Arlington, VA; and

May 23, 2007, 10 a.m. to 3:30 p.m., New York, NY.

The Department has scheduled a public meeting on Docket No. 2007–OE–02 (the draft Southwest Area National Corridor) for May 17, 2007, 10 a.m. to 3:30 p.m., San Diego, CA.

ADDRESSES: Color versions of the figures included in today's notice as well as other supporting documents are available at *http://nietc.anl.gov.*

You may submit written comments on one or both of the draft National Corridors electronically at *http://nietc.anl.gov*, or by mail to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. If you are commenting on Docket No. 2007–OE–01 (the draft Mid-Atlantic Area National Corridor), your comments must be marked ''Attn: Docket No. 2007–OE–01.'' If you are commenting on Docket No. 2007–OE–02 (the draft Southwest Area National Corridor), your comments must be marked ''Attn: Docket No. 2007–OE–02.'' The following electronic file formats are acceptable: Microsoft Word (.doc), Microsoft Works (.wps), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you may only submit your comments by mail, and you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening. DOE therefore encourages commenters to submit comments electronically by e-mail. If comments are submitted by mail, the Department requests that they be accompanied by a CD or diskette containing the electronic files of the submission.

The locations for the public meetings are:

Arlington—Doubletree Hotel Crystal City—National Airport, 300 Army Navy Drive, Arlington, VA 22202–2891;

New York—Park Central New York Hotel, 870 Seventh Avenue at 56th Street, New York, NY 10019–4038; and

San Diego—Manchester Grand Hyatt San Diego Hotel, One Market Place, San Diego, CA 92101.

If you are interested in speaking at one of these meetings, please sign up at *http://www.energetics.com/NIETCpublicmeetings* or call 410–953–6250.

FOR FURTHER INFORMATION CONTACT: For technical information, David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411. *david.meyer@hq.doe.gov.* For legal information, Mary Morton, DOE Office of the General Counsel, (202) 586–1221, *mary.morton@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct) added a new section 216 to the Federal Power Act (16 U.S.C. 824p) (FPA). New FPA section 216(a) requires the Secretary of Energy (Secretary) [1] to conduct a nationwide study of electric transmission congestion [2] within one year from the date of enactment of EPAct and every three years thereafter. FPA section 216(a)(1) requires the Secretary to consult with ''affected States'' when conducting the study. 16 U.S.C. 824p(a)(1). FPA section 216(a)(2) provides ''interested parties'' with an opportunity to offer ''alternatives and recommendations.'' 16 U.S.C. 824p(a)(2). Following consideration of such alternatives and recommendations, the Secretary is required to issue a report on the study ''which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor.'' 16 U.S.C. 824p(a)(2). FPA section 216(a)(4) states that in determining whether to designate a corridor, the Secretary may consider whether:

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted;

(C) the energy independence of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy; and

(E) the designation would enhance national defense and homeland security.

16 U.S.C. 824p(a)(4).

The effect of a National Corridor designation is to delineate geographic areas within which, under certain circumstances, the Federal Energy Regulatory Commission (FERC) may authorize ''the construction or modification of electric transmission facilities.'' FPA section 216(b); 16 U.S.C. 824p(b). The statute imposes several conditions on the exercise of FERC's

[1] This notice uses the terms ''Secretary'' and ''Department'' interchangeably.

[2] Electric transmission congestion (congestion) is the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously. Congestion results from a transmission capacity constraint (constraint). *See* Section II.A of this notice for further discussion of these terms.

permitting authority within a National Corridor.

Under FPA section 216(b)(1), FERC jurisdiction is triggered only when either: the State does not have authority to site the project; the State lacks the authority to consider the interstate benefits of the project; the applicant does not qualify for a State permit because it does not serve end-use customers in the State; the State has withheld approval for more than one year; or the State has conditioned its approval in such a manner that the project will not significantly reduce congestion or is not economically feasible. 16 U.S.C. 824p(b)(1).[3] Further, FPA section 216(g) states, ''Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.'' 16 U.S.C. 824p(g).

Under FPA section 216(b)(2)–(6), FERC may issue a permit only if all of the following conditions are met: the facilities will be used for the transmission of electric energy in interstate commerce; the project is consistent with the public interest; the project will significantly reduce congestion and protect or benefit consumers; the project is consistent with national energy policy and will enhance energy independence; and the project maximizes, to the extent reasonable and economical, the transmission capabilities of existing towers or structures. 16 U.S.C. 824p(b)(2)–(6).[4]

Accordingly, a National Corridor designation itself does not preempt State authority or any State actions. A National Corridor designation is not a determination that transmission must, or even should, be built; it is not a proposal to build a transmission facility and it does not direct anyone to make a proposal. Transmission expansion is but one possible solution to a congestion or constraint problem; increased demand response, improved energy efficiency, and conservation, as well as siting of additional generation close to load centers are also potential solutions. Whether a particular transmission project, some other transmission project, or a non-transmission project is an appropriate solution to a congestion or constraint problem identified by a National Corridor designation is a matter that market participants, applicable regional planning entities, and State authorities, among others, will consider and decide before any project is built. In the event that FERC jurisdiction under FPA section 216(b) is triggered, the designation of a National Corridor by the Secretary does not control FERC's substantive decision on the merits as to whether to grant or deny a permit application, specifically where any facilities covered by a permit should be located, or what conditions should be placed on a permit.

A National Corridor designation is not a siting decision; it does not dictate the route of any transmission project. If a transmission project is proposed in a National Corridor, it will be the State siting authorities, and potentially FERC if certain conditions are met, that will determine the specific route of that project.[5]

Thus, FPA section 216(a) does not shift to the Department any of the traditional roles of transmission planners and siting authorities in evaluating solutions to congestion and constraint problems and designing routes for transmission facilities. Instead, FPA section 216(a) assigns to the Department the role of identifying transmission congestion and constraint problems, and the geographic areas in which these problems exist.

B. Congestion Study

On August 8, 2006, DOE issued its initial congestion study (the Congestion Study) for comment by interested members of the public and affected States (71 FR 45,047 (Aug. 8, 2006)). The Congestion Study gathered historical congestion data obtained from existing studies prepared by the regional reliability councils, regional transmission organizations (RTOs) and independent system operators (ISOs),[6] and regional planning groups. The Congestion Study also modeled future congestion: the years 2008 and 2011 for the Eastern Interconnection; and the years 2008 and 2015 for the Western Interconnection. The modeling focused on five metrics: binding hours (the number of hours per year that a path is loaded to its limit and, thus, unable to accommodate all desired power transactions), U90 (the number of hours per year that a path is loaded above 90 percent of its limit), all-hours shadow price (the marginal cost of generation redispatch required to accommodate a given constraint averaged across all hours in the year), binding hours shadow price (average shadow price over only those hours during which the constraint is binding), and congestion rent (shadow price multiplied by flow, summed over all hours the constraint is binding).

Based on the historical data and the modeling results, the Congestion Study classified the most significant congestion areas in the country. Two ''Critical Congestion Areas'' (*i.e.* areas where the current and/or projected effects of congestion are especially broad and severe) were identified: the Atlantic coastal area from metropolitan New York through northern Virginia (the Mid-Atlantic Critical Congestion Area); and southern California (the Southern California Critical Congestion Area). Four ''Congestion Areas of Concern'' (*i.e.* areas where a large-scale congestion problem exists or may be emerging but more information and analysis appear to be needed to determine the magnitude of the problem) were identified: New England; the Phoenix-Tucson area; the San Francisco Bay area; and the Seattle-Portland area. Also, a number of ''Conditional Congestion Areas'' (*i.e.* areas where future congestion would result if large amounts of new generation were to be developed without simultaneous development of associated transmission capacity) were identified, such as: Montana-Wyoming; Dakotas-Minnesota; Kansas-Oklahoma; Illinois, Indiana and upper Appalachia; and the Southeast.

DOE has received over 400 comments on the Congestion Study. DOE has made all of these comments available at *http://nietc.anl.gov.* The Department is no longer accepting comments on the Congestion Study. All comments filed in response to today's notice should be limited to the draft National Corridors set forth in this notice.

[3] *See also* Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440, 69,468 (Dec. 1, 2006), 117 FERC ¶ 61,202 at pp. 128–29 (2006) (to be codified at 18 CFR parts 50 and 380), *reh'g pending* (FERC Order No. 689) (§ 50.6(e) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(1) are met).

[4] *See also id.* (§ 50.6(f) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(2)–(6) are met).

[5] *See id.* 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at PP 41–42 (''The Commission will conduct an independent environmental analysis of the project and determine if there is no significant impact as required by [the National Environmental Policy Act]. It will look at alternatives, including, as appropriate, alternatives other than transmission lines. * * * It will review the alternatives for their respective impacts on the environment and will determine mitigation measures to lessen the adverse impacts. * * * The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); and 71 FR 69,440, 69,470, 117 FERC ¶ 61,202 at p. 142–43 (§§ 380.5(b)(14) and 380.6(a)(5) require either an environmental assessment or an environmental impact statement for projects seeking permits under sec. 216(b)).

[6] RTOs and ISOs are Federally regulated entities charged with operating a regional transmission system in a manner that is non-discriminatory and ensures safety and reliability. The existing RTOs and ISOs do not own any transmission or generation and are run by independent boards of directors.

C. Purpose of Today's Notice

This notice summarizes and responds to the comments received in response to the Congestion Study that are relevant to the designation of National Corridors. This notice also issues and solicits comment on draft National Corridor designations for the two Critical Congestion Areas identified in the Congestion Study: the draft Mid-Atlantic Area National Corridor; and the draft Southwest Area National Corridor. See Figure I–1 for the location of these draft National Corridors.[7] Further, the Department has scheduled three public meetings to discuss these draft National Corridor designations. If, after consideration of all comments on these draft designations, the Secretary decides that one or more National Corridor designations are appropriate, he will issue one or more orders making such designations.

[7] A detailed explanation of the location of these draft National Corridors is provided in Sections VIII.D and IX.D of this notice.

BILLING CODE 6450–01–P

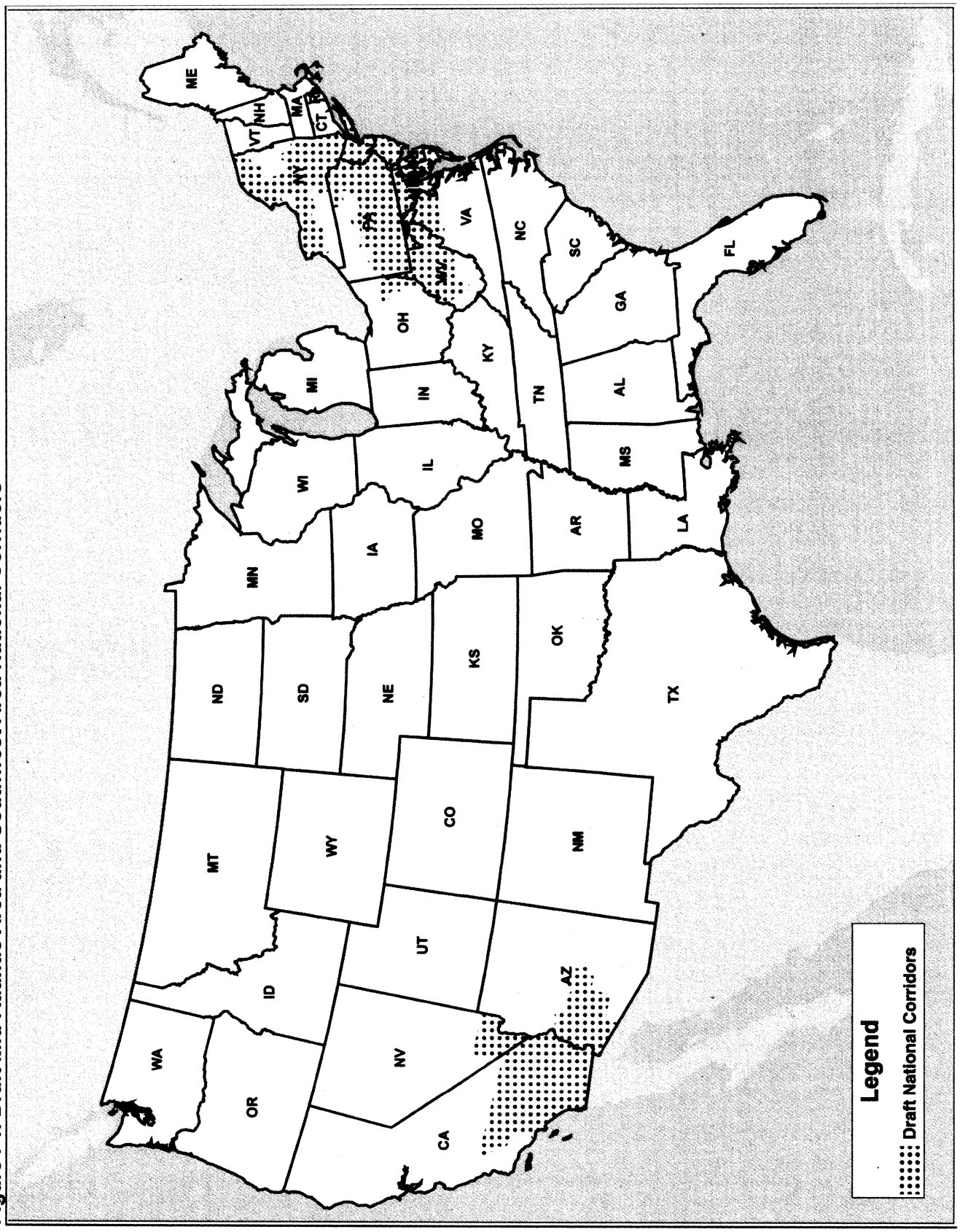


Figure I-1. Draft Mid-Atlantic Area and Southwest Area National Corridors

Source: U.S. Department of Energy, April 2007.

This notice is also intended to notify interested persons how to obtain party status for the proceeding in Docket No. 2007–OE–01 or the proceeding in Docket No. 2007–OE–02. Review of any final order designating a National Corridor in one of these proceedings will be governed by section 313 of the FPA (16 U.S.C. 8251). Thus, only those

persons who have obtained party status in the proceeding may file a request for rehearing of a final order with the Department. Further, to the extent that any person has standing to obtain judicial review, the filing of a rehearing request within 30 days of issuance of the final order is a prerequisite to such potential judicial review. In order to become a party to one or both of these proceedings, you must file comments in response to this notice in the manner indicated in the **ADDRESSES** portion of this notice by the deadline date identified in the **DATES** portion of this notice.

The proceedings being started today focus on the two geographic areas of the Nation experiencing the most acute and urgent electric transmission congestion problems. This notice takes no action with regard to the other geographic areas discussed in the Congestion Study. Thus, today's notice does not address comments received on the Congestion Study that relate solely to areas outside the two Critical Congestion Areas. Also, today's notice does not address those comments that relate to the conduct of future congestion studies. The Department will address the subject of how it intends to conduct future congestion studies in a later notice.

II. Deciding When a National Corridor Designation Is Warranted

The Congestion Study solicited comment on the criteria the Secretary should use when determining when a National Corridor designation is warranted. In this section, the Department summarizes and responds to these comments.

A. General Scope of the Secretary's Authority

Summary of Comments

The Department received numerous comments that relate to the general scope of the Secretary's authority to designate National Corridors, including comments on the meaning of key terms used in FPA section 216(a). The Department received a few comments on the appropriate definition of ''congestion'' and ''constraint.'' FirstEnergy Service Company (FirstEnergy) supported the definition of ''congestion'' used in the Congestion Study. National Grid USA (National Grid) argued that the Congestion Study's definition of ''constraint'' should be expanded to include not just limitations due to a piece of equipment, but also due to the absence of equipment between two or more nodes. Similarly, the California Energy Commission (CEC) argued that the focus of the Congestion Study is too narrow to accommodate State laws and policies on renewable portfolio standards. The CEC stated that the Department's criteria for identifying congestion should incorporate consideration of constraints that pose obstacles to reasonably priced power, diversity of supply, and energy independence, regardless of whether those constraints currently produce congestion.[8] Upper Great Plains Transmission Coalition argued that the lack of evidence of curtailments and congestion costs does not necessarily mean that a critical constraint is absent; for example, sophisticated management tools in place in the upper Great Plains have avoided the need for transmission loading relief (TLR) actions,[9] nevertheless, export capacity is constrained.

The Department received comments on the level of adverse effects on consumers needed to justify a National Corridor designation. The Pennsylvania Public Utility Commission (PAPUC) argued that National Corridors should be designated only where it is demonstrated that there is chronic physical congestion that has potential for substantially impairing existing or future grid reliability. The Attorney General for the State of Connecticut (Connecticut Attorney General) argued that the Department has no authority to designate a corridor in an area that the Congestion Study acknowledges does not rise to the level of a Critical Congestion Area. The Connecticut Attorney General argued that the statute was not intended to empower the Department to ''act as a sort of roving commission that oversees transmission planning and construction nationwide,'' and thus designations should be limited to ''those limited and extraordinary circumstances in which transmission constraints so severely impact the national interest that Federal intervention'' may be warranted.

On the other hand, LS Power Development, LLC (LS Power) argued that the statutory standard for designating a corridor ''appears to be relatively low'' and that this is understandable given the limited purpose of a National Corridor designation. LS Power further argued that the Department should apply the standard for designation liberally, instead of ranking different areas of congestion and only addressing some of those areas. LS Power asserted that if an area is congested, consumers are therefore adversely affected by higher costs, and consumers should be afforded the potential relief available through a National Corridor designation. Similarly, the Edison Electric Institute (EEI) argued that the Department should not wait until a major problem emerges before designating a National Corridor, given the long-term, capital-intensive nature of electricity infrastructure development. EEI urged the Department to maintain a high-level view and not dwell on the unachievable goal of technical precision in the congestion study process before making designations. The Electric Power Supply Association (EPSA) argued that National Corridor designation is warranted wherever the grid is constrained to the point of only being available to accommodate power flows of incumbent utilities to serve their native load, because in all such circumstances consumers are adversely affected by the existence of a barrier to entry of potentially lower-cost competitors.

The Department received comments on the use of projections of future congestion to support a National Corridor designation. The Organization of MISO States (OMS) argued that the statute makes clear that designations may only be made for areas actually experiencing congestion adversely affecting consumers, and does not provide for designations in areas that *may* experience congestion in the future or under certain circumstances. Therefore, OMS was not persuaded that National Corridor designation is warranted in the Congestion Areas of Concern or the Conditional Congestion Areas. OMS stated that rather than attempting to forecast the need for future National Corridors, designations should be in response to existing, persistent, and well-documented problems. Some Western commenters, including Northern Wasco County Peoples Utility District (NWPUD) and Seattle City Light (SCL), argued there is a need to examine historical data and not rely solely on simulated congestion metrics. Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources and Trade LLC (collectively PSEG) argued that forecasts of future congestion, driven by long-range projections of fuel costs, are inherently questionable. ABB, on the other hand, said National Corridor designation should not be based solely on analysis of historic congestion but rather should be made after a comprehensive analysis of future resource mix and resource adequacy.

[8] *See also* comments of BP Alternative Energy North America Inc.

[9] TLR is a procedure used in the Eastern Interconnection, usually outside of organized markets, to deal with situations when a transmission path has reach its operating limit.

The American Wind Energy Association, Wind on the Wires, Interwest Energy Alliance, the Wind Coalition, and the Renewable Northwest Project (collectively Wind Associations) expressed concern that the Department may approach Conditional Congestion Areas in a manner that ''continues the 'chicken and egg' problem of wind development, in which no generators are constructed until transmission capacity is built, but no transmission capacity is expanded until there are generators requesting service.'' Thus, the Wind Associations sought clarification that National Corridors can be designated in a Conditional Congestion Area before all the expected generation has been developed in that area.

Some commenters called for clarification of the criteria the Department would use in deciding whether to designate a National Corridor and made recommendations about criteria they considered most important. For example, the Committee on Regional Electric Power Cooperation (CREPC) stated that the Department should develop metrics for the criteria used to designate National Corridors and document how it has applied the criteria. CREPC argued that priority should be given to designating National Corridors that enable the achievement of State energy policy objectives or that address location-constrained generation resource areas; low priority should be given to areas with contractual congestion but little physical congestion, or areas where findings of congestion are based on studies with a high level of uncertainty. The American Public Power Association (APPA) suggested that the Department focus on the effect that a designation will have on the plans of load-serving entities to meet their long-term service obligations to their retail customers; in particular, the effect on deliverability of new base-load and renewable resources to the load-serving entities that intend to purchase power from those resources. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) [10] supported the reduction in electricity supply costs as a criterion for National Corridor designation; however, only if there is sufficient evidence that such cost reductions would occur and that the amount of the reductions would be significant enough to warrant national attention.

[10] Midwest ISO is the RTO serving all or parts of Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin.

DOE Response

FPA section 216(a)(2) gives the Secretary the discretion to designate as a National Corridor ''any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' The statute does not define any of the terms in this phrase.

The Congestion Study defined ''congestion'' as the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously. This definition generated little debate among commenters.[11] The Congestion Study defined ''transmission constraint'' as a limitation on one or more transmission elements that may be reached during normal or contingency system operations. The Congestion Study also defined ''constrained facility'' as a transmission facility (line, transformer, breaker, etc.) that is approaching, at, or beyond a System Operating Limit or Interconnection Reliability Operating Limit.[12] ''Congestion,'' then, refers to the denial of desired transmission service over a transmission path, while ''constraint'' refers to the chokepoint on the transmission system that causes such denial of desired transmission service.

In contrast, there is no generally accepted understanding of what constitutes ''constraints or congestion that adversely affects consumers,'' as the debate among the commenters amply demonstrates. The term is ambiguous, and the statute attaches no modifiers to the term to specify the particular type or magnitude of adverse effect intended. While the Congestion Study identified and applied various metrics ''related to the magnitude and impact of congestion,'' the Congestion Study did not attempt to define when constraints or congestion ''adversely affects consumers.'' In the following discussion, the Department will first address congestion that adversely affects consumers and then constraints that adversely affect consumers.

With regard to congestion that adversely affects consumers, the Department notes that any congestion, by definition, thwarts customer choice, because it prevents users of the transmission grid from completing their preferred power transactions. These users include wholesale industrial consumers of power as well as load-serving entities buying power on behalf of retail consumers, all of whom are prevented by congestion from obtaining delivery of desired quantities of electricity from desired sources. In other words, any congestion on a line necessarily interferes with the choices of those who wish to use that line on their own or their customers' behalf. Whenever there is congestion on a transmission path, there simply is not enough transmission capacity to accommodate all the desired power transactions, and some sort of rationing of available capacity is needed. In areas with organized electricity markets, this rationing generally occurs through a pre-established economic mechanism, such as a congestion management system based on locational marginal prices (LMPs),[13] which is designed to allocate the limited capacity to the users who value it the most. In areas of the country without organized markets, the rationing may involve the transmission provider denying requests for transmission service, adjusting schedules, or in some cases making *pro rata* curtailments in real time. Regardless of how the rationing is resolved, however, one thing remains true: congestion results in some users of the transmission system being denied the benefit of their preferred transactions.

Moreover, electricity buyers generally seek power from the most economic source. Arranging for delivery of power from less preferred sources is referred to as ''redispatching'' power. When congestion occurs, resulting in the need

[11] Other sources use similar definitions. See, *e.g.*, California Independent System Operator, Conformed Simplified and Reorganized Tariff, App. A, Master Definitions Supplement (April 6, 2007) (''Congestion—A condition that occurs when there is insufficient Available Transfer Capacity to implement all Preferred Schedules simultaneously or, in real time, to serve all Generation and Demand.''); and Southwest Power Pool, Glossary and Acronyms, *http://www.spp.org/glossary.asp?letter=C* (''Congestion is a condition that occurs when insufficient transfer capacity is available to implement all of the preferred schedules for electricity transmission simultaneously.'').

[12] One aspect of the constraint-related definitions used in the Congestion Study did generate debate among commenters, which is addressed later in this section.

[13] In general terms, an LMP-based congestion management system entails an RTO or ISO operating a bid-based energy market in which those generators and loads who have not fully committed themselves through bilateral power contracts can participate. As the operator of the transmission system, the RTO or ISO also analyzes whether transmission of all the desired energy transactions is simultaneously feasible. When there are no binding constraints, the energy market clears at a single price throughout the system. When a constraint is binding, separate prices result on either side of the constraint. Market participants can then see and respond to these different LMPs. Those customers who choose to have power transmitted over the binding constraint are assessed a transactional congestion charge based on the difference between the LMPs on either side of the constraint.

for buyers to accept power from less-preferred generating sources in order to meet their power needs, redispatch is required and typically results in the use of more expensive power. Congestion also usually reduces competition and diversity, by limiting the range of generators from which buyers can obtain power. Finally, congestion means that parts of the transmission system are so heavily loaded that grid operators have fewer options for dealing with adverse circumstances or unanticipated events, thus increasing the risk of blackouts, forced interruptions of service, or other grid-related disruptions.

Therefore, any congestion can adversely affect at least some consumers. Nevertheless, congestion remedies are not free; therefore, not all congestion is worth fixing. Under certain circumstances, congestion can arise on any transmission path. But the appearance of isolated or transient instances of congestion usually does not warrant consideration of transmission expansion. While the Department is not attempting in this notice to define the complete scope of the term ''congestion that adversely affects consumers'' as used in FPA section 216(a)(2), the Department concludes that the term includes congestion that is persistent. Thus, the Department believes that FPA section 216(a) gives the Secretary the discretion to designate a National Corridor upon a showing of the existence of persistent congestion, without any additional demonstration of adverse effects on consumers. However, as discussed below, whether the Secretary should exercise his discretion to designate a National Corridor in a given instance of congestion is a separate question.

With regard to constraints that adversely affect consumers, one way in which a constraint can adversely affect consumers is by causing persistent congestion that in turn, as discussed above, adversely affects consumers. However, the Department agrees with those commenters who argue that the Secretary's authority is not limited to areas where congestion presently exists. If Congress had intended to limit the Secretary's designation authority over constraints to cases where constraints are currently causing congestion, then there would have been no need for the statutory language to refer to ''any geographic area experiencing electric energy transmission constraints *or* congestion that adversely affects consumers.'' *See* 16 U.S.C. 824p(a)(2) (emphasis added). Further, the Department agrees with those commenters who argued that the total absence of a line connecting two nodes can be just as, if not more, limiting to consumers than the presence of a line that is operating at capacity and, therefore, constraints include the absence of transmission equipment between two or more nodes.[14]

Constraints limit access to power sources. Further, the existence of a constraint can hinder the development of new power sources, since project sponsors may not be able to obtain the financing they need if there is uncertainty over the degree to which their electricity could be delivered to consumers. Again, the Department is not attempting in this notice to define the complete scope of the term ''constraints that adversely affect consumers'' as used in FPA section 216(a)(2). However, the Department concludes that the term includes not only constraints that cause persistent congestion, but also constraints that hinder the development or delivery of a generation source that is in the public interest. Thus, the Department believes that FPA section 216(a) gives the Secretary the discretion to designate a National Corridor upon a showing of the existence of a constraint, including the total absence of a transmission line, that is hindering the development or delivery of one or more generation sources that is in the public interest, regardless of whether there is congestion and without the need for any additional demonstration of adverse effects on consumers.[15] This interpretation of the term ''constraints or congestion that adversely affects consumers,'' which allows for a National Corridor designation when there is a constraint that adversely affects consumers even though there is no present congestion, is appropriate because it gives meaning to all of the terms used in the statutory provision.

Additionally, this interpretation of the statute answers the concerns of those commenters who question whether the statute authorizes designation of National Corridors in the Conditional Areas of Concern based solely on projections of future congestion. The Congestion Study identified several Conditional Areas of Concern ''where future congestion would result if large amounts of new generation were to be developed without simultaneous development of associated transmission capacity.'' The Secretary is taking no action with respect to those areas at this time. Nevertheless, were the Secretary to designate a National Corridor for one of those areas, the Secretary would need only to demonstrate the existence of a constraint that was hindering the development or delivery of a generation source that is in the public interest, and would not need to rely on demonstrations of future, or even present, congestion.[16]

The Department's interpretation of the scope of the Secretary's authority is consistent with the objective and structure of the statute. FPA section 216(a), as well as other provisions of EPAct,[17] evince concern about the need to strengthen transmission infrastructure throughout the Nation. The Department concludes that a broad interpretation of the Secretary's discretion to designate National Corridors is consistent with that concern, particularly given the effect of a National Corridor designation, as discussed in Section I.A above. Given the statutory limitations on the exercise of FERC's permitting authority, there is no need to interpret narrowly the Secretary's National Corridor designation authority.

While the Department concludes that the Secretary has broad authority to designate National Corridors, FPA

[14] A node is the physical location on the transmission system where energy is, or will be, injected by generators or withdrawn by loads.

[15] As the Department is not issuing any draft National Corridors today based on the existence of constraints in the absence of persistent congestion, it is unnecessary in this notice to reach the question of the type of information that would be required to demonstrate that a constraint is hindering the development or delivery of a generation source that is in the public interest. However, the Department notes that the considerations identified in FPA section 216(a)(4) provide some examples of generation sources the development of which would be in the public interest, including sources that are needed to ensure adequate or reasonably priced electricity, sources that are needed for diversification of supply, sources that would promote energy independence, sources that would further national energy policy, or sources that would enhance national defense and homeland security. There may, however, be other generation sources the development of which would be in the public interest.

[16] Because the Department is not issuing any draft National Corridor designations based solely on projections of future congestion (without any showing of a constraint that adversely affects consumers), it is not necessary to determine now the extent of its authority to do so.

[17] *See, e.g.*, EPAct sec. 1241 (requiring FERC to establish rules to promote capital investment in transmission); EPAct sec. 1233 (requiring FERC to exercise its authority in a manner that facilitates planning and expansion of transmission to meet the needs of load-serving entities); EPAct sec. 368 (requiring the designation of energy right-of-way corridors across Federal lands for electric transmission and other energy projects); FPA sec. 216(h) (establishing procedures to ensure timely and efficient review of proposed transmission projects by Federal agencies); and EPAct sec. 1222 (giving additional authority for Western Area Power Administration and Southwestern Power Administration to participate with other entities in the development of transmission).

section 216(a) does not require the Secretary, under any circumstances, to make a National Corridor designation. Rather, in recognition of the Department's expertise, the statute leaves to the Secretary's judgment which geographic areas experiencing constraints or congestion adversely affecting consumers to designate as National Corridors. The Department recognizes that FPA section 216(a) adopted a novel approach to addressing the need for new transmission infrastructure, an approach that poses challenges to all stakeholders as we collectively work to address this problem. Therefore, the Secretary intends to proceed carefully in the exercise of his discretion to designate National Corridors. As evidenced by the specific draft designations set forth below, the Department is not starting the process of designating National Corridors at the outer limits of its authority. The Congestion Study identified two Critical Congestion Areas, and today's notice issues two draft National Corridors to address them. These draft National Corridors are based on the existence of well-known, persistent congestion that adversely affects large numbers of consumers.

Finally, the Department does not believe it is necessary to develop a specific and finite set of criteria to guide the exercise of the Secretary's discretion. Instead, the most reasonable interpretation of FPA section 216 is that the Secretary may make National Corridor designations based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

B. Analysis of Potential Solutions

Summary of Comments

The Department received comments on whether a National Corridor designation should be based on an analysis of potential solutions to an identified congestion problem. Many commenters, including the National Association of Regulatory Utility Commissioners (NARUC), the New York Public Service Commission (NYPSC), and the New Jersey Board of Public Utilities (NJBPU), argued that the Department should conduct a cost/benefit analysis of transmission solutions as well as non-transmission solutions to relieving congestion before designating a National Corridor; otherwise, they contend, the designation would unfairly skew the playing field in favor of transmission solutions.[18] For example, the NJBPU and PSEG argued that without such an analysis, National Corridor designation may lead to preemptive siting of long-haul rate-based transmission projects intended to move power from remote generating sources to load centers, and thus distort or destroy market signals for local developers of generation, demand response resources, and improvements to local distribution systems. NYPSC and the New York Independent System Operator (NYISO)[19] urged the Department to analyze the potential market impact of a National Corridor designation, because the very act of designating a National Corridor could cause downstream project developers to abandon already-planned facilities. Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. (collectively ConEd) and NJBPU expressed concern about whether a National Corridor would disadvantage local generation to the detriment of reliability, noting that remote generation cannot provide the same level of voltage support and other ancillary services that local generation can. Numerous individuals who commented in opposition to specific transmission projects asserted that the Department has an obligation under FPA section 216 to consider alternatives to building new transmission lines.

On the other hand, numerous commenters argued that the Department should not engage in analysis of possible solutions to congestion. These commenters noted that the Department's role is to identify areas where congestion and constraints exist, whereas other entities, including State siting authorities, regional planning entities, market participants, and under some circumstances FERC will consider the relevant solutions. These commenters cautioned that any such analysis by the Department would unnecessarily delay the designation process.[20]

DOE Response

The Department disagrees with those commenters who argue that a National Corridor designation is warranted only if the Department has demonstrated that transmission is the best, or at least a cost-effective, solution to an identified congestion problem. Nothing in FPA section 216 requires or envisions that the Department make such a demonstration. In fact, the preparation of a transmission cost-benefit analysis by the Department would be inconsistent with the very role that the statute assigns to the Department. As discussed in Section I.A above, the Department's role under FPA section 216 is to identify constraint or congestion problems and their geographic locations; the statute does not call for the Department to analyze and decide upon solutions. While FPA section 216(a)(2) does call for the Secretary to consider ''alternatives and recommendations from interested parties'' before making a National Corridor designation, the reference to ''alternatives and recommendations from interested parties'' in this provision is ambiguous. In light of the statutory framework, the Department concludes that the term ''alternatives and recommendations from interested parties'' is intended to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, as well as comments suggesting that the Department refrain from designating a National Corridor.

The Department acknowledges that transmission expansion is but one possible solution to a congestion or constraint problem; increased demand response, improved energy efficiency, and conservation, as well as siting of additional generation close to load centers are also potential solutions. However, given the effect of a National Corridor designation and the existing obligations of State and Federal siting authorities as discussed in Section I.A above, there is no need for the Department to undertake an analysis of transmission solutions and non-transmission solutions or to speculate about any theoretical indirect effects a National Corridor designation would have on the market. Indeed, the Department believes that expanding its role to include making findings on the optimal remedy for congestion could supplant or otherwise duplicate the traditional roles of States and other entities.

C. Cost Allocation

Summary of Comments

The Congestion Study solicited comment on how the costs of proposed transmission should be allocated. A few commenters argued that the Department

[18] *See also* comments of EPSA, Northern Indiana Public Service Company, Old Dominion Electric Cooperative (ODEC), OMS, Piedmont Environmental Council (PEC), PSEG, The Wilderness Society (Wilderness), and many individuals.

[19] NYISO is the ISO serving New York State.

[20] *See, e.g.*, comments of FirstEnergy, National Grid, and National Rural Electric Cooperative Association (NRECA).

should consider cost allocation when deciding whether to make a National Corridor designation, and offered recommendations on specific cost allocation structures.[21] For example, Montana-Dakota Utilities Co. argued that the Department should only designate National Corridors where the resulting transmission facilities would be paid for on a beneficiary-pays, rather than a postage-stamp, basis. NRECA supported rolled-in rate treatment for projects that serve native load network customers. However, the majority of those who provided comment on cost allocation issues urged against the Department considering those issues in the FPA section 216(a) process.[22] These commenters noted that FERC, rather than the Department, has jurisdiction over cost allocation for transmission projects, and argued that cost allocation was not relevant to National Corridor designation.

DOE Response

The Department agrees with those commenters who argue that the analysis of whether to designate a National Corridor should not include consideration of how the costs for new transmission facilities will be allocated. While cost allocation issues can be critically important to determining whether, when, and where specific transmission projects are developed, those issues are not relevant to the Secretary's role under FPA section 216(a) of identifying geographic areas where congestion or constraints are adversely affecting consumers.

D. Regional Planning and Local Siting

Summary of Comments

The Department received comments on the relevance of regional planning processes to National Corridor designation. FirstEnergy argued that in general, in RTO regions, National Corridors should be designated when a transmission facility would relieve congestion in an identified congestion area and the facility has been recognized as needed for reliability in an RTO's transmission planning and expansion process. The Midwest ISO argued that the Department should wait to designate a National Corridor until a suitable planning solution is proposed within an identified congestion area. NARUC argued that the Department should grant deference to the results of adequate regional planning processes. Other commenters, for example NYPSC, also recommended that the Department should coordinate its designations with regional planning processes.

On the other hand, some commenters expressed concern about the Department relying too much on RTO input regarding designation of National Corridors. For example, ODEC argued that while RTOs provide a forum within which public and well-vetted transmission planning *could* occur, at this time they lack procedures needed to ensure that such planning would actually occur. ABB expressed concern about the fragmented nature of the studies performed by RTOs.

OMS argued that any designation must be based on the existence of siting barriers. For example, OMS asserted that if needed transmission is not being constructed due to cost recovery or other non-siting uncertainties, then a designation is inappropriate. According to OMS, designation is only appropriate when a National Corridor is truly necessary to solve a congestion problem of national significance, when the congestion problem is persistent, and when the prior failure to develop a solution is the result of siting problems. The Public Utilities Commission of the State of California (CPUC) argued that designation is unwarranted unless there is evidence that State and regional processes are not addressing the problem in a timely manner. CPUC argued that it is, first of all, up to the States and the regions to solve their transmission planning and siting problems, and Federal agencies should not intervene unless and until there is a demonstrated need for them to do so. CPUC further asserted that designation of a National Corridor in connection with any large multi-state project is likely to delay project siting, because of litigation and conflict it would produce. CEC commented that Federal back-stop siting would be beneficial where the State has been unable to make progress in approving vital transmission projects.

PAPUC argued that the Department should not make any designation that does not clearly identify the national interests requiring protection and without making findings of fact that those interests are better served by a National Corridor designation than by another approach that would be less intrusive of State laws and policies. NYISO urged the Department to designate National Corridors with care so as not to usurp arbitrarily State siting authority. On the other hand, the Midwest ISO argued that the Department should not wait until local siting has become problematic, given the effect of a National Corridor designation.

DOE Response

The Department disagrees with those commenters who suggest that the Department defer making a National Corridor designation either until siting problems have already manifested themselves or until a regional planning process proposes a solution to the congestion or constraint problem. Nothing in FPA section 216 requires or envisions that the Department adopt a wait-and-see approach to National Corridor designation. FPA section 216 empowers the Department to make designations when it finds constraints or congestion adversely affecting consumers, a finding that is not dependent on actions that others (*e.g.*, transmission owners, regional planners, or States) may take to remedy those constraints or congestion. The Department fully supports such entities taking aggressive action to remedy congestion and nothing in a National Corridor designation conflicts with their ability to do so. Moreover, acting in parallel with the efforts of other entities is consistent with Congressional intent in enacting EPAct, which emphasizes the immediate need for new investment in transmission. Delaying action by the Department until action by all others is exhausted would not be consistent with this intent, nor with the Nation's pressing need for new transmission.

Moreover, the statute provides a specific mechanism by which States can insulate themselves from the FERC permitting provisions of FPA section 216(b). FPA section 216(i)(1) provides that three or more contiguous States may enter into interstate compacts establishing regional transmission siting agencies. 16 U.S.C. 824p(i)(1). Such regional transmission siting agencies would then have authority to site transmission facilities in National Corridors. FPA section 216(i)(3); 16 U.S.C. 824p(i)(3). Further, FERC would have no authority to issue a transmission permit within a State that is party to such a compact unless the members of the compact were in disagreement and the Secretary, after notice and opportunity for hearing, made a finding that the conditions of FPA section 216(b)(1)(C) were met. FPA section 216(i)(4); 16 U.S.C. 824p(i)(4). In light of this mechanism, as well as the other statutory limitations on FERC's permitting authority discussed in Section I.A above, the Department concludes it would be inappropriate for it to limit itself to designating National Corridors where States have either

[21] *See* comments of PSEG, ODEC, and J. Hayden.

[22] *See, e.g.*, comments of Allegheny Power, American Electric Power (AEP), Arizona Public Service Company (APS), ConEd, Duke Energy Corporation (Duke), EEI, FirstEnergy, LS Power, National Commission on Energy Policy (NCEP), National Grid, and OMS.

failed to act or have already developed a preferred solution.

The Department supports and encourages regional planning efforts. A National Corridor designation neither dictates nor bars any solution that might be considered in a regional planning process. The Department intends to draw the boundaries of any National Corridor so as to encompass a range of potential transmission solutions. In the event that a regional planning process concludes that a modification to an existing National Corridor designation is needed, the Department will consider such a request.

III. Defining National Corridor Boundaries

Summary of Comments

In the Congestion Study, the Department solicited comment on how, where, and on what basis to establish the boundaries of a National Corridor. One approach identified in the Congestion Study would use specific transmission projects to define National Corridor boundaries. Under this approach, a proponent of a National Corridor would identify a specific project that could serve as a solution to the underlying congestion or constraint problem, an approximate centerline for the project would be identified, and the National Corridor boundary would be banded around that centerline. A number of commenters, including EEI, AEP, and Allegheny Power (Allegheny), supported this approach.

Some commenters supported a project-based approach provided that there was some sort of independent review of the project. For example, ODEC argued that an open stakeholder process should first identify and vet conceptual projects and then make National Corridor boundary recommendations to the Department for those projects. Southern California Edison Company (SCE) argued that National Corridor boundaries should be tailored to aid in the construction of specific viable transmission projects approved through a regional planning process. CREPC stated that the delineation of National Corridor boundaries should be informed by a detailed analysis of congestion mitigation options.

Several commenters raised the possibility of an incremental process for setting National Corridor boundaries, under which the Secretary would first make a designation of a broad area, and then as specific transmission proposals are developed and presented for review by appropriate authorities, the Secretary would narrow the boundaries.[23] Commenters who supported a project-based approach emphasized that National Corridor boundaries drawn in such manner should not dictate a particular line route, but rather should be drawn broadly enough to allow for consideration of alternative alignments during the siting process.

On the other hand, some commenters opposed the project-centerline approach to developing National Corridor boundaries. For example, PAPUC argued that such an approach would involve the Secretary in siting decisions of the sort that Congress did not intend and for which the Department lacks expertise. OMS opposed National Corridor designation for particular projects. A number of commenters supported use of a non-project-based approach either instead of or in addition to a project-based approach. FirstEnergy suggested that in the absence of a specific project, a National Corridor could be drawn by means of a radius around the congested area. However, most commenters who supported a non-project-based approach recommended that the Department use a source-and-sink approach to setting National Corridor boundaries, in which the Department would identify a sink (the congested or constrained load area) and a source (an area of potential supply), and then draw a National Corridor connecting these two areas.[24] AEP's version of a source-and-sink approach looks at three factors: the area of potential generation resources, the critically congested load area, and the transmission deficiencies between the two areas.

Several commenters supported the specification of precise boundaries for National Corridors. For example, Allegheny argued that specific boundaries are needed so that the project sponsor would know whether its project is encompassed within a National Corridor, FERC could readily determine the geographic scope of its potential jurisdiction, and land owners would know whether their property may be subject to the Federal exercise of eminent domain. However, OMS argued that instead of setting specific perimeter boundaries, the Department should identify source and sink areas, define the goal of the National Corridor, and then limit the National Corridor designation to those projects that further that goal. OMS expressed concern that delineation of specific boundaries could have the effect of establishing Federal transmission line corridors within States, and notes that just because a proposed project is located within a National Corridor it should not be assumed to address the concerns that lead to the designation of the National Corridor.

With regard to drawing the specific perimeters of a National Corridor, Allegheny argued for using existing or proposed originating, intermediate, and terminating substations for proposed lines identified by planning studies. Numerous commenters argued that the Secretary should draw National Corridor boundaries to exclude parks and other environmentally protected areas.[25] Some commenters, including CEC, Imperial Irrigation District (IID) and the Appalachian Trail Conservancy, recommended that the Department take into consideration existing rights of way when drawing boundaries. CEC argued that DOE should ensure that any National Corridors in California are delineated in a manner consistent with recent legislation concerning State designation of electric transmission corridors.[26] NCEP noted that congestion occurs within an electrical system of flowgates rather than within a specific geographic framework, and expresses concern that arbitrary geographic boundaries may foreclose the most cost-effective option for remedying congestion. Thus, NCEP argued that Balancing Authorities, which have the job of managing congestion, should be used to define National Corridor boundaries.

Several commenters emphasized the need to make the area covered by a National Corridor broad, to ensure adequate flexibility of transmission planners and siting authorities to consider alternatives.[27] The Appalachian Trail Conservancy argued that National Corridors should be 75 to 100 miles wide in order to allow flexibility to align projects to avoid environmentally sensitive areas. Northwestern Energy argued for broad National Corridors so that one group of developers is not put at an unfair advantage. ABB argued that the boundaries of a National Corridor should include adjacent contiguous areas physically affected by large

[23] *See, e.g.*, comments of APS, Wyoming Infrastructure Authority, and Great Northern Properties, L.P. and Great Northern Power Development, L.P.

[24] *See, e.g.*, comments of PAPUC, OMS, and National Grid.

[25] *See, e.g.*, comments of CEC, National Parks Conservation Association, National Park Service, Wilderness, Upper Delaware Council, and numerous individuals.

[26] *See* 2006 Cal. Adv. Legis. Serv. 638 (Deering) (to be codified at Cal. Pub. Res. Code §§ 25330–341).

[27] See, *e.g.*, comments of PG&E, ConEd, LS Power, National Grid, and Western Business Roundtable.

transmission upgrades since it is likely that additional reinforcements will be needed in those outlying areas. EEI argued in favor of a two-track process for drawing boundaries. Under EEI's process, where there is a specific transmission project that could address the congestion or constraint problem, the boundaries would be as narrow as several miles wide; where no specific projects have been proposed, the boundaries would be wider, up to 200 miles, to allow for a range of possible solutions.

On the other hand, some commenters acknowledged the need for flexibility to consider alternatives but cautioned against drawing the National Corridor boundaries too broadly. For example, the City of New York stated that an overbroad interpretation of ''corridor'' is both inconsistent with the plain meaning of the word and may be too amorphous to provide adequate guidance for beneficial transmission planning. The PAPUC argued that National Corridors should be set so as to minimize the intrusion into State siting jurisdiction and to guarantee that any transmission projects claiming the benefits of the National Corridor designation will actually address the problem Congress intended to address. PAPUC further argued that the Department should require a project claiming the benefits of the National Corridor designation to show that its project would substantially alleviate the specific directional congestion on which the National Corridor was based and that the project would not conflict with any other transmission solutions being planned in the applicable regional planning process. Long Island Power Authority (LIPA) argued that an overbroad National Corridor would dilute the effectiveness of FPA section 216 and would discourage non-transmission solutions.

DOE Response

The statute provides little direction on how the Department should draw the boundaries of a National Corridor. FPA section 216(a) uses the term ''geographic area'' and lists several considerations the Secretary may take into account when making a National Corridor designation. However, the statute does not define the term ''corridor.'' While this term is commonly understood to refer generally to some sort of path between different areas, the specific meaning of the term in this context is ambiguous. After careful consideration of the overall purpose and effect of this statutory provision, as well as the comments received, the Department has concluded that, while there may be circumstances where a project-based approach would be appropriate, in general the Department will use a source-and-sink approach to defining National Corridor boundaries.

As discussed in Section I.A above, the National Corridor designation process is intended as a process to identify congestion and constraint problems, and the geographic areas in which these problems exist, rather than as a process to identify solutions to those problems. Just as the determination of whether to designate a National Corridor need not await or rely on the existence or analysis of specific transmission proposals, neither does the determination of the boundaries of that National Corridor. Setting National Corridor boundaries through a source-and-sink approach is consistent with the problem-identification purpose of National Corridor designations under FPA section 216(a), because it is not focused on any particular transmission projects, or set of transmission projects.

The Department recognizes that when it designates a National Corridor, there may be specific projects that have already been proposed within the boundaries of that National Corridor. Such is the case with the draft National Corridors designations in this notice. This result is not surprising, because these draft National Corridors encompass well-known constraints that have adverse effects on millions of consumers. However, the Department emphasizes that it is neither endorsing nor recommending any specific projects when it designates a National Corridor based on a source-and-sink analysis.

There was broad consensus among the commenters that if a project-based approach were not used to set National Corridor boundaries, then a source-and-sink approach should be used. Such an approach is consistent with the common usage of ''corridor'' as an area linking two other areas. Such an approach also is consistent with the physical properties of the electrical grid, because a transmission line into a congested or constrained load area will not benefit that load unless the line connects with a source of power that could help to serve the load.

While the comments support the use of a source-and-sink approach to setting National Corridor boundaries, they provide little clarification about how such an approach should actually be implemented. The details of how the Department will draw the boundaries of a National Corridor will depend on the specific circumstances. However, in general terms, the geographic extent of the sink area in a National Corridor is determined by the geographic distribution of the consumers adversely affected by the congestion or constraints—in other words, the location of load downstream of the limiting transmission constraints.

With regard to the source area, where the decision to designate a National Corridor is based on the existence of a constraint that is hindering the development or delivery of a particular generation source that is in the public interest,[28] the identification of the appropriate source area would be relatively straightforward: the source area would be the geographic area within which that particular source of supply is, or is likely to be, located. In contrast, where the decision to designate a National Corridor is based on the existence of persistent congestion, the identification of an appropriate source area may require the consideration of a range of potential source areas. The selection of a source area or source areas in those situations will necessarily involve discretion and is not suited to a formulaic approach.

Given the long lead time involved in planning, obtaining regulatory approvals for, and constructing transmission projects, areas without a current surplus of generation could well develop additional power sources by the time a transmission project is completed. Therefore, depending on the circumstances, the Department may consider as potential source areas not only those areas with existing surplus generation, but also areas with projected surplus generation, or areas with available fuel supply for additional generation.

Once the Department has identified the range of potential source areas, it must then decide which of those potential source areas it will use to set the boundaries of a National Corridor. The Department observes that the considerations identified in FPA section 216(a)(4) provide guidance on some of the possible bases for making this decision. FPA section 216(a)(4)(A)–(E) authorizes the Secretary when making a National Corridor designation to consider lack of adequate or reasonably priced electricity, diversification of supply, energy independence, national energy policy, and national defense and homeland security. Each of these considerations potentially has relevance to the selection of source areas. For example, certain potential source areas may provide greater diversity of supply than others, or may be more consistent with national energy policy. Therefore, when there are multiple potential source areas, the Secretary will use his

[28] *See* Section II.A above.

expert judgment to determine which of the potential source areas to include, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

After the Department has identified the sink and source areas, it must then delineate the specific boundaries of a National Corridor linking those areas. The Department agrees with the majority of commenters that National Corridor designations should specify precise geographic boundaries. Such an approach is not only consistent with the plain meaning of the statutory term ''geographic area,'' it also provides greater clarity and ease of administration to those entities concerned with whether a particular project or land area would be encompassed within a National Corridor.

The Department acknowledges that determining the exact perimeters for a National Corridor under a source-and-sink approach is more an art than a science, and there will rarely be a dispositive reason to draw a boundary in one place as opposed to some number of miles to the left or right. The drawing of the boundary is ultimately a judgment the Secretary must make, based on all relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate, and available, relevant data. There is no single boundary line that can be determined based solely upon analysis of the data. The Department notes that the drawing of the boundary lines of a National Corridor does not finally determine or fix the substantive rights of anyone. A National Corridor designation simply provides developers proposing certain projects within its boundaries an additional procedural option in the form of a potential Federal siting venue that is not available to transmission projects outside a National Corridor.

Therefore, the Department agrees with those commenters who emphasize the need for the Department to draw National Corridor boundaries so that they could encompass a range of potential projects and a range of potential routes.[29] So long as a range of alternatives is encompassed, further refinement is unnecessary. Given this approach, the Department concludes that it is not necessary to adjust the boundaries of a National Corridor to avoid parks or other environmentally protected areas or to align the boundaries with existing rights of way.[30] Further, the Department need not attempt to interpret State laws on siting preferences. The determination of the best route for a specific project will be made by siting authorities, who are better positioned to make such a determination. As discussed in Section I.A above, if a project in a National Corridor were to satisfy the statutory requirements for seeking a permit from FERC, FERC would analyze alternative routes for that project, including route realignments necessary to avoid adverse effects on the environment, landowners, and local communities. Nothing in FPA section 216 alters the applicability of Federal environmental and cultural statutes and regulations.

The Department recognizes that some States are concerned that specification of broad boundaries could result in unintended expansion of Federal siting authority to include proposed transmission projects that happen to be located within a National Corridor but are unrelated to the problem that prompted the National Corridor designation. Sometimes the approach described above could produce very large corridors; sometimes it could produce smaller corridors. The breadth of a corridor would be driven by the geographic expanse of the adversely affected load, the number and geographic dimensions of source areas, and the distance between the source and sink areas. FPA section 216(b) itself specifies the scope of FERC jurisdiction over projects proposed to be built in National Corridors, including a requirement that the project will ''significantly reduce transmission congestion and protects or benefits consumers.'' [31] The Department believes that these statutory limitations adequately address the States' concerns and do not require further clarification by the Department.

Finally, in the event that an affected party concludes at some later stage that a modification to the boundaries of an existing National Corridor is needed, the Department will consider such a request.

IV. Involvement of Interested Parties

A. Public Notice

Summary of Comments

Some commenters argued that it would be premature to designate any National Corridors without a full disclosure of the data and analysis underlying the conclusions in the Congestion Study. NYPSC, the Maine Public Utilities Commission (Maine PUC), and NARUC argued that the Department must perform a more granular analysis of congestion before designating a National Corridor; according to these commenters, the Congestion Study alone does not provide an adequate record of how the conclusions about congestion were reached. PAPUC stated that while the Congestion Study is a good initial assessment of congestion at the national level, designation of specific National Corridors cannot be based on the preliminary analysis contained in the Congestion Study; according to PAPUC, more specific and focused regional studies must be conducted prior to any designation. A number of commenters argued that the Congestion Study fails to provide adequate notice of a National Corridor designation under the Administrative Procedure Act, 5 U.S.C. 551.[32]

DOE Response

The Department notes that as of September 27, 2006, it made available on its Web site non-proprietary data relied on in the Congestion Study. Moreover, as discussed further below, the Department in this notice is identifying the specific data on which it is relying to establish the existence of congestion or constraints adversely affecting consumers, to explain the reasons the Secretary is considering exercising his discretion to designate a National Corridor, and to explain how

[29] Drawing National Corridor boundaries broadly may also help encompass transmission upgrades needed to address ''loop flow.'' Loop flow is a phenomenon of alternating current transmission networks in which electricity flows seek their own paths, sometimes in patterns unanticipated by system operators. Thus, a transmission improvement designed to correct a congestion problem on one part of the transmission system may in some cases cause loop flows elsewhere that must also be addressed.

[30] The Department acknowledges that this approach to establishing boundaries for National Corridors under FPA section 216(a) differs from the approach being used for energy right-of-way corridors on Federal land under EPAct section 368. However, given the distinct purposes of FPA section 216 and EPAct section 368, the Department believes that applying different approaches to the two different types of corridors is appropriate. *See Env't Def.* v. *Duke Energy Corp.*, No. 05–848, slip op. at 10 (U.S. April 2, 2007) (''A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.'')

[31] *See* FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41 (''The Commission will review the proposed project and determine if it reduces the transmission congestion identified in DOE's study and if it will protect or benefit consumers.''); and 71 FR 69,440, 69,468, 117 FERC ¶ 61,202 at pp. 128–29 (§ 50.6(f) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(2)–(6) are met).

[32] *See* comments of Upper Delaware Preservation Coalition, Delaware Riverkeeper Network, SayNo2NYRI, Upstate NY Citizens Alliance, and Stop NYRI, Inc. (collectively Delaware River Commenters), Communities Against Regional Interconnection (CARI) and Toll Brothers, Inc. (Toll Brothers).

the specific boundaries of the draft National Corridors were delineated. Commenters will have a full opportunity to comment on those data.

B. State Consultation

Summary of Comments

A number of commenters raised concerns about the level of consultation with States. Several commenters asserted that the Department failed to consult with the States in New England in the preparation of the Congestion Study.[33] NARUC commented that the Department failed to consult with States in some regions. Other commenters argued that the Secretary should not designate any National Corridors without further consultation with affected States.[34]

DOE Response

FPA section 216(a)(1) requires that the Department conduct its congestion studies ''in consultation with affected States.'' FPA section 216(a)(2) then states that ''[a]fter considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report, based on the study, which may designate * * * [National Corridors].'' The Department is committed to fulfilling its obligation to consult with States in this process. At the same time, the Department notes that there are practical difficulties in conducting the level of consultation that some may prefer in the context of a study of this magnitude, which examines congestion over 150,000 miles of transmission lines throughout 47 States and the District of Columbia, within statutorily mandated deadlines. Moreover, the statute refers to conducting the congestion study in consultation with ''affected States.'' It is difficult to know which States are ''affected'' until the conclusions of the congestion study are known.

The Department has provided States with numerous opportunities for input and has held meetings with officials representing individual States and groups of States. The Department initiated a series of conference calls in December 2005 and January 2006 with States to describe the Department's study plan and request information and suggestions. On February 2, 2006, the Department published a Notice of Inquiry explaining the Department's intended approach for the Congestion Study and inviting comment. On March 29, 2006, the Department held a public technical conference in Chicago, Illinois to address the questions presented in the Notice of Inquiry. The Congestion Study itself was made available for comment on August 8, 2006. In addition, the Department held numerous meetings with State officials to discuss the Congestion Study and made presentations at several State conferences and events.[35]

As indicated by its outreach efforts in connection with the Congestion Study, the Department recognizes the importance of State consultation. The Department further recognizes that the most significant stage of the entire process under FPA section 216(a) is the National Corridor designation stage. Therefore, in addition to making the draft National Corridor designations described in this notice available for comment, the Secretary is simultaneously contacting the Governors of each State in which the draft National Corridors would be located to arrange consultation meetings.

V. Environmental and Cultural Analyses

Summary of Comments

The Department received several comments proposing that the Department prepare a Programmatic Environmental Impact Statement (PEIS), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) (NEPA), before designating any National Corridors. Specifically, some commenters state that designating a National Corridor is equivalent to establishing a plan for routing transmission lines and, therefore, must be evaluated in a PEIS.[36] Other commenters argue that a National Corridor designation is not just a plan for routing of transmission lines, but rather would amount to a de facto permitting of a specific, identifiable transmission line for which a PEIS or an Environmental Impact Statement must be prepared.[37]

Several commenters also asserted that the designation of a National Corridor selects a transmission-based solution to congestion rather than alternative energy solutions such as siting local generation or increased demand response. These commenters argue that DOE should conduct a PEIS that considers alternatives to transmission-based solutions to congestion prior to designating a National Corridor.[38]

Other commenters note that the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508) require that NEPA be applied at the earliest possible time in the planning process and contend that, therefore, DOE should prepare a PEIS prior to any designation of a National Corridor.[39] Still other commenters state that DOE should prepare a PEIS before designating a National Corridor because a PEIS would allow DOE to examine not just environmental impacts from individual projects but also cumulative environmental and non-environmental impacts, including socioeconomic impacts.[40]

The Department also received comments that it should conduct other environmental and cultural analyses, such as a review under the National Historic Preservation Act (16 U.S.C. 470) (NHPA), before designating National Corridors.[41] For example, the Advisory Council on Historic Preservation states that the Department should conduct a ''tiered'' approach under the NHPA, and that the Department should designate National Corridors that are broad enough to ensure that feasible alternatives to mitigate potential adverse effects to historic properties may be developed and evaluated at a later stage.

DOE Response

Section 102(2)(C) of NEPA requires that all Federal agencies include an environmental impact statement in

[33] *See* comments of Maine PUC, New England Conference of Public Utility Commissioners (NECPUC), Connecticut Attorney General, New England Governors' Conference, Inc., and Maine Congressional Delegation.

[34] *See, e.g.*, comments of the Governor of the Commonwealth of Virginia, Arizona Corporation Commission (Arizona Commission), and American Transmission Company LLC.

[35] National Conference of State Legislatures, Seattle, WA, Aug. 18, 2005; Southern States Energy Board, Atlanta, GA, Aug. 27, 2005; Midwest State Energy Office, webcast, Aug. 31, 2005; National Association of State Energy Officials, New York, NY, Sept. 12, 2005, and Washington, DC, Feb. 7, 2006; CREPC, San Diego, CA, Sept. 20, 2005, and Sept. 27, 2006, and Portland, OR, April 4, 2006; NARUC, Palm Springs, CA, Nov. 14, 2005, Washington, DC, Feb. 14 and 22, 2006, San Francisco, CA, Aug. 1, 2006, and conference calls, Jan. 11, 2006, and June 16, 2006; NYPSC, Albany, NY, Dec. 20, 2005; OMS, conference call, May 11, 2006; Florida Public Service Commission, Tallahassee, FL, June 15, 2006; Midwestern Legislative Conference, Chicago, IL, Aug. 20, 2006; Organization of PJM States, Inc., Cambridge, MD, Sept. 17, 2006; CPUC, conference call, Sept. 20, 2006; CEC, conference call, Sept. 22, 2006; and Maine PUC, conference call, Oct. 6, 2006.

[36] *See e.g.*, comments of Delaware River Commenters.

[37] *See, e.g.*, comments of National Trust for Historic Preservation and numerous individuals.

[38] *See, e.g.*, comments of PEC and Virginia Chapter of the Sierra Club (Sierra Club); *see also* comments of U.S. Sen. Warner and U.S. Rep. Wolf.

[39] *See, e.g.*, comments of CARI.

[40] *See, e.g.*, comments of Wilderness.

[41] *See, e.g.*, comments of Civil War Preservation Trust, Foundation of the State Arboretum of Virginia, and National Parks Conservation Association.

''every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(2)(C). The designation of a National Corridor under FPA section 216(a)(2) does not significantly affect the quality of the human environment. To the contrary, as described in Section I.A above, a National Corridor designation is not a determination that transmission must, or even should, be built; it is not a proposal to build a transmission facility and it does not direct anyone to make a proposal. Nor does the Department's designation of a National Corridor result in or plan for any ground-breaking environmental impacts. Nor does National Corridor designation irrevocably commit any resources to any activity having foreseeable environmental impacts. Designation of a National Corridor does not control FERC's substantive decision on the merits as to whether to grant or deny a permit application, specifically where any facilities covered by a permit should be located, or what conditions should be placed on a permit. Further, as discussed in Section III above, the Department has decided not to establish the boundaries of today's draft National Corridors using a project-centerline approach that would give an advantage to a particular transmission line. As discussed in Section I.A above, the Department's approach to National Corridor designation does not foreclose future options for addressing congestion, including non-transmission options. For these reasons, National Corridor designation is not a ''proposal for a major Federal action significantly affecting the quality of the human environment'' that falls within the purview of NEPA.

While NEPA review is not required at this time, all proposals for Federal siting permits will be subject to, as appropriate, project-specific NEPA review. In addition to NEPA, proposals for such permits will also be subject to other environmental and cultural reviews, including, but not limited to, review under the NHPA.[42] Nothing in FPA section 216 alters the applicability of Federal environmental and cultural statutes and regulations.

VI. Duration of National Corridor Designations

Summary of Comments

The Congestion Study solicited comment on whether National Corridor designations should be permanent or whether the Department should set an expiration date. Most commenters did not address this question. Most of those who did said that DOE should not set a standard duration period for National Corridor designations. SCE, for example, said that relevant conditions would vary too much from case to case, and that DOE should establish a period suitable to a given National Corridor and then work with affected parties to determine when or if the designation should be terminated. APS emphasized that the development of transmission facilities is often a protracted process; that the initial designation should be for a considerable period; and that thereafter DOE should ensure that a designation does not expire in a manner that would disadvantage existing efforts to relieve congestion problems. EEI said that designations should not have any fixed duration; rather, they should simply remain in force until rescinded by DOE. EEI argued that DOE should stipulate in its designations that it reserves the right to rescind a designation if it finds that the designation is no longer needed, and that it would revisit the need for existing designations in its periodic studies and reports. EEI also emphasized the need for DOE to ensure that it did not rescind a designation prematurely.

Wilderness noted that DOE is to update its congestion study every three years, and suggested that DOE should reassess the need for existing National Corridors as part of each three-year study. Similarly, the York County Planning Commission said that designations should be for three-year terms, subject to renewal or rescission based on the findings in the updated congestion analyses.

PJM Interconnection, LLC, (PJM)[43] recommended that DOE designate National Corridors for an initial 10-year term, and stipulate the Secretary's right to rescind or modify the terms or boundaries of a National Corridor at any time after showing that such action was appropriate.

DOE Response

DOE appreciates the need to be responsive to the broad range of factors and considerations pertaining to the duration of National Corridor designations. It also recognizes that designations, once made, should be in place for a considerable period of years, with the possibility of either rescission or renewal for cause. Accordingly, DOE intends to adopt a default approach, under which an initial designation would be for a period of 12 years unless it finds reason in a particular case to set some other initial term. Notwithstanding this approach, the Department recognizes the disruptive effect that regulatory uncertainty can have on transmission investment. Therefore, the Department does not intend to terminate any National Corridor designations while an accepted permit application in that National Corridor is pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed. The Department will stipulate in any National Corridor designation order that the designation may be modified, rescinded, or renewed for cause at any time, after a period of public notice and comment and consideration of the comments.

VII. Technical Comments on the Congestion Study

In this section, the Department summarizes and responds to technical comments it received on the Congestion Study that are relevant to today's draft National Corridor designations. Specifically, the Department first summarizes and responds to those comments on the data and methodology used in the Congestion Study that have general relevance to any National Corridor designation. Then, the Department summarizes and responds to comments on the Congestion Study that have particular relevance to the draft National Corridor designations in this notice. As mentioned above, today's notice does not address comments received on the Congestion Study that relate solely to areas outside the two Critical Congestion Areas or that relate to the conduct of future congestion studies.

A. Comments of General Relevance

Several commenters commended DOE for its efforts in completing the first national electric transmission congestion study and advancing the discussion on transmission congestion. NARUC stated, ''The DOE's successful development of a base case electric load flow model in a single year for the entire Eastern Interconnection is a significant achievement.'' First Energy commented that ''DOE seems to have relied on appropriate information to support its conclusions in the Congestion Study. DOE seems to have made reasonable assumptions about the electric infrastructure that will be in use and seems to have relied upon reasonable modeling methods with respect to identifying potential future transmission constraints.''

[42] *See* FERC Order No. 689 discussed in n.4.

[43] PJM is the RTO serving parts or all of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

The Midwest ISO remarked:

> The classification of congested areas into Critical Congestion Areas, Congestion Areas of Concern, or Conditional Congestion Areas is an appropriate means to distinguish between varying characteristics of these congested areas * * *. Overall, the method employed to identify congested areas is an appropriate combination of available historical data, transmission studies by planning organizations, and simulation of future congestion.

EEI applauded the Department for the timely completion of the Congestion Study, stating, ''In light of the strong emphasis on electric infrastructure made by the Congress in enacting EPAct, the congestion study identifies a broad range of critical geographic areas throughout the nation that face potentially serious challenges for ensuring reliable and cost-effective electricity delivery.''

International Transmission Company stated that as a general matter, ''the Congestion Study did a commendable job of identifying areas of the United States in which congestion represents an economic problem, i.e., where densely populated, economically significant regions of the country face limited access to economic sources of electricity as the result of transmission congestion.'' However, the Department also received comments expressing concern about several general aspects of the Congestion Study, as discussed below.

1. Data Sources

Summary of Comments: ODEC stated that the Department should not rely solely on RTOs and ISOs for data, asserting that their processes are not totally open, collaborative and inclusive. Toll Brothers asserted that rather than conduct its own Congestion Study, the Department has relied too much on industry sources, such as PJM, Allegheny, and transmission owners who wheel power for low-cost providers into higher priced markets.

DOE Response: The Department did not rely solely on data and information from any single source or category of sources. The Department contacted a wide range of stakeholders for publicly available and current data. Through the notice of inquiry and technical conference the Department opened the call for data to all entities. Furthermore, the Department performed its own review of the information provided.

2. Congestion Metrics

Summary of Comments: The Department received a number of comments on the use of congestion rents to measure congestion. ODEC supported the use of congestion rents as a congestion metric. However, several commenters complained that congestion rent can significantly overstate the economic effect of congestion because the figure does not account for hedging. NYISO argued that the proper metric to measure congestion is potential production cost savings not gross congestion rent, which ''is merely an accounting protocol that does not recognize the offsets that exist under various hedging instruments and grandfathered contract arrangements.'' Similarly, NYPSC argued that gross congestion rent is a misleading metric that significantly overstates the cost of congestion by failing to factor in the return of some congestion revenues to loads. NYPSC argued that the Department should measure congestion by analyzing the additional cost of local generation required to serve customers in a load pocket.[44] Toll Brothers argued that under FPA section 216(a), the Department may only consider economic factors after the Department has demonstrated that congestion exists, and the demonstration of the existence of congestion must be based on an analysis of the transmission system's physical capability of meeting the demand for electricity. According to Toll Brothers, if demand can be met, then there is no congestion, regardless of the relative price of the power needed to meet that demand.

Other commenters argued that congestion rent has limited relevance outside of organized markets, and thus the Congestion Study significantly underestimated congestion and constraints in the areas of the country without such markets. Several commenters from the Southeast, for example the Public Works Commission of the City of Fayetteville, North Carolina, expressed concern that the Study had missed significant congestion problems and urged the Department to consider other types of information, such as lack of long-term firm transmission capacity. NRECA and NEC also argued for use of alternative metrics, including available transfer capacity. Western commenters, including NWPUD and SCL, noted that the need to look at alternative metrics, such as withdrawn or declined transmission requests, limits on scheduling rights, or real-time schedule curtailments, is particularly important in the Northwest, given that power there is obtained solely through bilateral markets. NWPUD and SCL assert that modeling congestion using production cost simulations may be misleading since most of the Western Interconnection uses contract path methods for acquiring, reserving, and scheduling transmission service. Duke noted that because areas without formal markets are generally served by vertically integrated utilities, the type of LMP-based congestion data typically provided by RTOs and ISOs are often not available. PSEG asserted that the Congestion Study is biased towards regions that use LMP because the Study is only capable of measuring congestion in LMP-type markets. PSEG concluded that this inherent bias is not properly recognized or addressed in the Study, as is evidenced by the fact that the Congestion Study contains no significant congestion findings for areas without organized markets. NCEP asserted that lack of data for the Southeast and parts of the West, where organized markets do not exist, presents a significant gap in the knowledge available to the Department to determine the need for National Corridors in those regions. NCEP further asserted that the fact that data from these areas are not available does not mean that congestion does not exist.

DOE Response: The Department recognizes that the Congestion Study's use of congestion rent as a metric has led to concern and confusion. The Department did not intend to suggest that congestion rents represent the actual monetary cost that consumers pay specifically as a result of congestion, or that congestion rents measure the benefits of relieving the congestion. The Department recognizes that outside of the organized markets that use LMP-based congestion management, transmission customers do not pay congestion rents *per se.* The Department further recognizes that within the organized markets that use LMP-based congestion management, financial transmission rights can provide load-serving entities with significant protection from the payment of congestion rents, although as the system becomes more constrained the availability of those rights may not be able to protect consumers from the full effects of congestion. Also, the Department recognizes that congestion rents are not the same as the cost of redispatch, a cost that some combination of transmission customers actually pay specifically as a result of congestion.

Nevertheless, congestion rents are an indicator of the existence of congestion, since if there is no congestion, there are no rents, and whenever there is congestion, congestion rents can be calculated. The Congestion Study modeled congestion rents for areas with

[44] *See also* comments of PSEG.

organized markets in the same way it modeled congestion rents for areas without organized markets. For both types of areas, the models determined congestion rent for a particular constraint by calculating a shadow price for that constraint and multiplying the shadow price by the megawatt (MW) flow on the constraint. For each constraint, models compute hourly shadow prices as marginal costs of redispatch required to relieve congestion (if any) on that constraint in each hour, taking into account the differences in production costs among the appropriate generators. Nevertheless, in most organized markets, RTOs and ISOs calculate LMPs and make them publicly available; whereas in areas without organized markets, there is less transparency with regard to the actual marginal cost of redispatch. Thus, the Congestion Study's modeling of congestion rents for areas with organized markets is easier to validate than for areas without organized markets.

With regard to the recommendation that the Department use changes in bid production cost instead of congestion rent to measure congestion, the Department concludes that use of bid production cost in the context of FPA section 216(a) congestion studies is not required. Bid production cost analysis compares a base case against different scenarios in which action is taken to alleviate congestion or constraints. By contrast, the Department is specifically *not* seeking to assess the benefits of different fixes to a congestion or constraint problem. Rather, the Department is simply identifying congestion or constraint problems, and the geographic areas in which these problems exist.

While the Department believes that congestion rent, when correctly understood, is a useful indicator of the persistence and pervasiveness of congestion within a transmission system, congestion rent was only one of the metrics used in the Congestion Study. Further, as discussed in Section II.A above, while FPA section 216(a) requires a National Corridor designation to be based on the existence of constraints or congestion that adversely affects consumers, once the Department has demonstrated the existence of persistent congestion, no additional demonstration, let alone monetization, of the adverse effects on consumers is required. Thus, in the draft National Corridor designations detailed below, the Department relies on historical binding hours and a range of other indicators to support its conclusion that the areas are experiencing persistent congestion and that National Corridor designation is appropriate. For the purposes of future congestion studies, the Department is considering whether other metrics, in addition to or instead of congestion rents, are appropriate, particularly in those areas without organized markets.

3. Direct Current Versus Alternating Current Modeling

Summary of comments: Some commenters, including NARUC, NYPSC, and PAPUC, asserted that the direct current (DC) model used by the Department for the Eastern Interconnection is oversimplified, does not adequately reflect the system, may understate congestion, cannot take into account voltage-related constraints, and therefore will not include any congestion caused by such constraints. According to these commenters, the impact of voltage-related constraints can be significant and should not be overlooked in the Congestion Study. These commenters argued that alternating current (AC) modeling (including thermal, voltage, and stability analyses under both normal and contingency conditions) should be used on a sub-regional basis to provide more detailed analysis of the areas identified as problematic through the DC modeling.

DOE response: For the Eastern Interconnection, modeling was performed using GE–MAPS, a commercially available simulation tool. GE–MAPS uses a DC representation of the load flow, which does not model reactive power requirements directly. Use of indirect approaches to account for reactive power is not unusual in electric analysis. For example, many well-known operational constraints in PJM, such as the Eastern, Central, and Western interfaces are proxies for reactive power limitations downstream. PJM specifies the MW limit (real power) to ensure that the capacity of local units to provide sufficient reactive power is not exceeded. It is not possible to conduct a full-scale AC power flow modeling exercise (with forward-looking unit commitment and hourly chronological dispatch) of the Eastern Interconnection using today's computational resources. While sub-regional analyses using AC modeling may be feasible, the Department does not believe that such analyses are necessary, given the purpose of the Congestion Study and the effect of any National Corridor designation, as discussed in Section I.A above.

4. Marginal Versus Average Losses

Summary of comments: Commenters, including NJBPU, asserted that using average costs for transmission losses (instead of marginal costs) for the entire Eastern Interconnection understates the congestion in certain areas. Specifically commenters pointed out that the PJM plan to adopt marginal losses as of June 2007 is not included and although the Florida Reliability Coordination Council sub-region uses marginal losses, the Congestion Study modeled that sub-region using average losses. In the West, the Western Electricity Coordinating Council (WECC) noted that its results showed that improvements are needed to address this issue.

DOE response: It is true that the Congestion Study modeled average losses for all regions. Although in some regions transmission losses are charged based on average cost and in others they are charged based on marginal cost, the models used in the Congestion Study require the use of either average or marginal losses for the entire model footprint. In future congestion studies, it may be more appropriate to model marginal losses in all regions.

5. Aggregation of Nodes

Summary of comments: Some commenters expressed concern that the Congestion Study's aggregation of the Eastern Interconnection's load and generation pockets into 253 nodes and analysis of the load flow patterns among them resulted in many local areas of congestion and localized transmission constraints not being identified or described. For example, Northern Indiana Public Service Company pointed out that not all congestion is on major transmission facilities and claims that flow on some major lines is limited by the potential of contingency overloads on secondary transmission lines contained within a node. Similarly, First Energy and SCL noted that the level of analysis does not present enough detail on their respective areas. ODEC claimed that the Department's node analysis should be made in conjunction with a more localized analysis of all nodes within a congested area. Otherwise, ODEC asserted that an aggregated approach is likely to result in congestion being understated because the implicit netting of adjacent buses may inadvertently offset one against another.

DOE response: In the modeling of the Eastern Interconnection for the Congestion Study, congestion was calculated at all constraints known to have been previously identified for monitoring by regional reliability

councils, RTOs, ISOs, and transmission owners. This calculation was wholly separate from the aggregation of the Interconnection into the 253 nodes, which was done later in the analytic process to identify broad patterns of power flows from sources to sinks and determine the principal transmission elements involved. Accordingly, all congestion at the identified locations was estimated and reported in the model's outputs. Any failure to flag real-world congestion through this approach should be traceable to either of two problems, or some combination of them: (1) a failure to identify a real-world constraint as appropriate for monitoring in the model; or (2) a disparity between the modeled results and real-world experience. The Department intends to explore this issue further in future congestion studies, and looks forward to working on it with interested entities.

6. Fuel Prices

Summary of comments: Commenters such as ODEC, ConEd, and Toll Brothers cautioned the Department against reliance on fuel scenarios. ODEC argued that evaluating different fuel price scenarios implies that fuel price is a driver in transmission congestion, when in fact it is the lack of sufficient transmission capacity that is the principal driver of transmission congestion. ConEd and PEC stated that the Department's assumption of an increasing price difference between coal-fired generation and natural-gas- and oil-fired generation is unrealistic. EPSA cautioned that the extreme weather conditions such as were experienced during 2005 and the related natural gas price impacts associated with hurricanes Katrina and Rita should not inflate assessments of the duration of congestion over the lifetime of a transmission asset.

DOE response: The Department did not intend to suggest in the Congestion Study that fuel price is the only factor creating congestion. In fact, congestion can exist in the complete absence of fuel price differences when generation capacity in a load pocket combined with transmission capacity to import energy is insufficient to meet demand. Further, in the absence of such a reliability problem, fuel price differences between locations on the grid will not result in congestion if transmission capacity is adequate to accommodate the demand for the cheaper power. The modeling performed in the Congestion Study resulted in similar locational patterns of congestion under each fuel price scenario, but with different congestion costs. The cost differences reflect the marginal generation costs, but the locations reflect the underlying transmission system topology. Moreover, the constraints that were identified generally are well-known constraints that have been long observed.

Contrary to the assertion of ConEd and PEC, natural gas and oil prices were assumed to drop in the base case of the Congestion Study over the time period of 2006 through 2015, thus narrowing the price spread between coal-fired generation and natural-gas- and oil-fired generation. What is more important is that the analysis considered three distinct fuel price scenarios which offer dramatically different relationships between the prices of natural gas and coal. At the same time, transmission problems identified in the Congestion Study as persistent are those that appear under all fuel price scenarios.

7. Seams

Summary of comments: ConEd expressed concern that the Congestion Study did not effectively take into account congestion caused by seams. ConEd asserted that, given the differences in market design between PJM and NYISO, market inefficiencies may produce congestion costs while in fact the lines are underutilized.

DOE response: The Department acknowledges that seams are an important issue in the analysis of congestion.[45] In the modeling conducted for the Eastern Interconnection in the Congestion Study, seams were reflected by means of the hurdle rates used for commitment and dispatch and the use of a ''commitment by pool'' modeling logic. It may be appropriate in future congestion studies to consider additional analysis of the effects that seams are having on congestion. However, the Department does not believe that the congestion that has led to today's draft National Corridors is primarily a result of interregional differences in market design.

8. Line Outages

Summary of comments: NWPUD and SCL question whether the Congestion Study adequately accounted for lengthy maintenance outages on transmission lines in the Western Interconnection.

DOE response: In the Western Interconnection, the transmission system is assumed intact when rating studies are conducted to determine the maximum capability, or Total Transfer Capability (TTC) of a path. In addition, seasonal Operating Transfer Capability (OTC) ratings are conducted for critical paths in the Interconnection. These studies assume system conditions expected to occur in the near term, such as long-term transmission or resource outages. The western studies used in the Congestion Study did de-rate some paths below their maximum path capability to account for the fact that operationally, they are often held below the maximum limits. The Pacific AC and DC Interties and the tie between Alberta and British Columbia are three examples that were de-rated in the studies to account for issues like those raised by SCL and Northern Wasco. The Department will consider additional approaches to handling the effects of line outages in future congestion studies.

B. Comments Specific to the Mid-Atlantic Critical Congestion Area

Summary of Comments

PEC noted differences between the load data used in the Congestion Study and the PJM Load Forecast Report 2006 and suggested that a detailed review and validation of the data is warranted. PEC, ConEd, and LIPA argued that the Department should revise the Congestion Study to reflect the data in NYISO's final 2006 Comprehensive Reliability Plan.

DOE Response

When preparing the Congestion Study, the Department made every effort to include the most current and best available data. The specific reports cited above were not available at that time, and the Department therefore relied on 2005 data. Nevertheless, the Department has reviewed the information cited by commenters and concludes that it does not alter the analysis set forth below concerning the draft designation of National Corridors.

Summary of Comments

National Grid suggested that the geographic area from Albany and Utica to New York City should be included within the Mid-Atlantic Critical Congestion Area.

DOE Response

The Department agrees that it is appropriate to include this area within the Mid-Atlantic Critical Congestion Area, and as discussed below, the Department has included this area in the draft Mid-Atlantic Area National Corridor.

Summary of Comments

PSEG believed that the Mid-Atlantic Critical Congestion Area identified by the Congestion Study is too broad. PSEG

[45] Seams are interregional differences in market design that result in market inefficiencies.

claimed that the Department's broad designation essentially means that each region and each city within this area suffers from the same type and degree of congestion problem. Given the unique transmission topology of the sub-regions, PSEG claimed that it is unlikely that each sub-region is experiencing the same degree of congestion.

DOE Response

DOE agrees that this broad area is not homogeneous and that congestion is not uniformly distributed. Nevertheless, as the entire region is downstream of significant constraints, congestion occurs to one degree or another across the entire area.

Summary of Comments

PSEG noted that the Congestion Study says (p. 41) that transmission congestion problems are worsening in southeastern New York, in New York State as a whole, in New Jersey, and in the Delaware River Path. PSEG added that the Study does not provide data applicable to PJM to support these assertions. Further, PSEG cited PJM's 2005 State of the Market Report as showing that although total gross congestion was rising in the PJM footprint over the 6-year period between 1999 and 2005, this was occurring as the geographic size of PJM's market was growing, and the level of gross congestion, as a percentage of total PJM billings, remained relatively consistent at about 8 percent (plus or minus 2 percent) per year.

DOE Response

DOE believes that the information it cites on pp. 42–43 of the Congestion Study strongly supports the assertions made on p. 41. Concerning congestion and PJM's expansion, DOE notes that from 1999 through 2005, PJM was expanding into relatively uncongested areas, while congestion was rising sharply in PJM's original, ''classic,'' footprint. Thus, although total congestion for PJM's footprint remained relatively consistent as a percentage of total PJM billing is true, that is not particularly relevant. The rapid increase in congestion in the eastern portion of PJM's footprint can be demonstrated in two ways. One way is to compare total annual congestion costs in the PJM footprint with total transmission revenue requirements (adjusting the latter figure as appropriate to take PJM's broadening footprint into account). As shown in Table VII–1, congestion costs rose from 7.4 percent of transmission revenue requirements in 1999 to 107.9 percent of these requirements in 2005. These figures suggest that the demands on the transmission system in PJM's footprint were increasingly intensive over this period.

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Table VII-1. PJM Transmission Revenue Requirements and Historical Congestion

Transmission Pricing Zones	Zonal Revenue Requirement	Transmission Revenue Requirement ($ millions, adjusted by year as expansion zones were integrated into PJM)						
		1999	2000	2001	2002	2003	2004	2005
American Electric Power	$486,074,331						122	486
Commonwealth Edison	$271,535,847						181	272
Dayton Power & Light	$40,100,000						10	40
Dominion Virginia Power Company	$155,000,000							103
Duquesne Light Company	$30,767,631							31
Subtotal PJM Expansion	**$983,477,809**						**313**	**932**
Allegheny Power	$128,000,000					96	128	128
Atlantic City Electric Company	$44,552,519	45	45	45	45	45	45	45
Baltimore Gas & Electric	$93,045,818	93	93	93	93	93	93	93
Delmarva Power & Light Company	$59,230,905	59	59	59	59	59	59	59
FirstEnergy (JCPL, Meted, Penelec)	$141,000,000	141	141	141	141	141	141	141
PECO Energy	$151,703,000	152	152	152	152	152	152	152
Potomac Electric Power Company	$93,558,866	94	94	94	94	94	94	94
PPL Group (PPL, AEC, UGI)	$125,680,702	126	126	126	126	126	126	126
PSE&G	$158,694,375	159	159	159	159	159	159	159
Rockland	$11,785,928	12	12	12	12	12	12	12
Subtotal Other PJM	**$1,007,252,113**	**879**	**879**	**879**	**879**	**975**	**1,007**	**1,007**
Total PJM Rev Req ($M)	**$1,990,729,922**	**879**	**879**	**879**	**879**	**975**	**1,320**	**1,939**
Congestion (from PJM 2005 Mkt Report)		**65**	**132**	**271**	**453**	**464**	**750**	**2,092**
Congestion Cost as % PJM Rev Req		**7.4%**	**15.0%**	**30.8%**	**51.5%**	**47.6%**	**56.8%**	**107.90%**

Sources: Congestion figures from the 2005 PJM State of the Market Report, Table 7-2. Zonal Revenue Requirement from Bethel Direct Testimony, Exhibit AEP-203, Column 2, in FERC Docket EL05-121-000.

Another way to see that congestion was growing rapidly in the eastern portion of PJM's footprint during this period is to compare historical changes in LMPs for the utilities in ''classic PJM.'' As shown in Figure VII–1, the LMPs for the eastern utilities in ''classic PJM'' were generally increasing between 2002 and 2005 or 2006, as compared to the LMP for Penelec, which is in ''classic PJM'' but located west of most of PJM's major constraints.

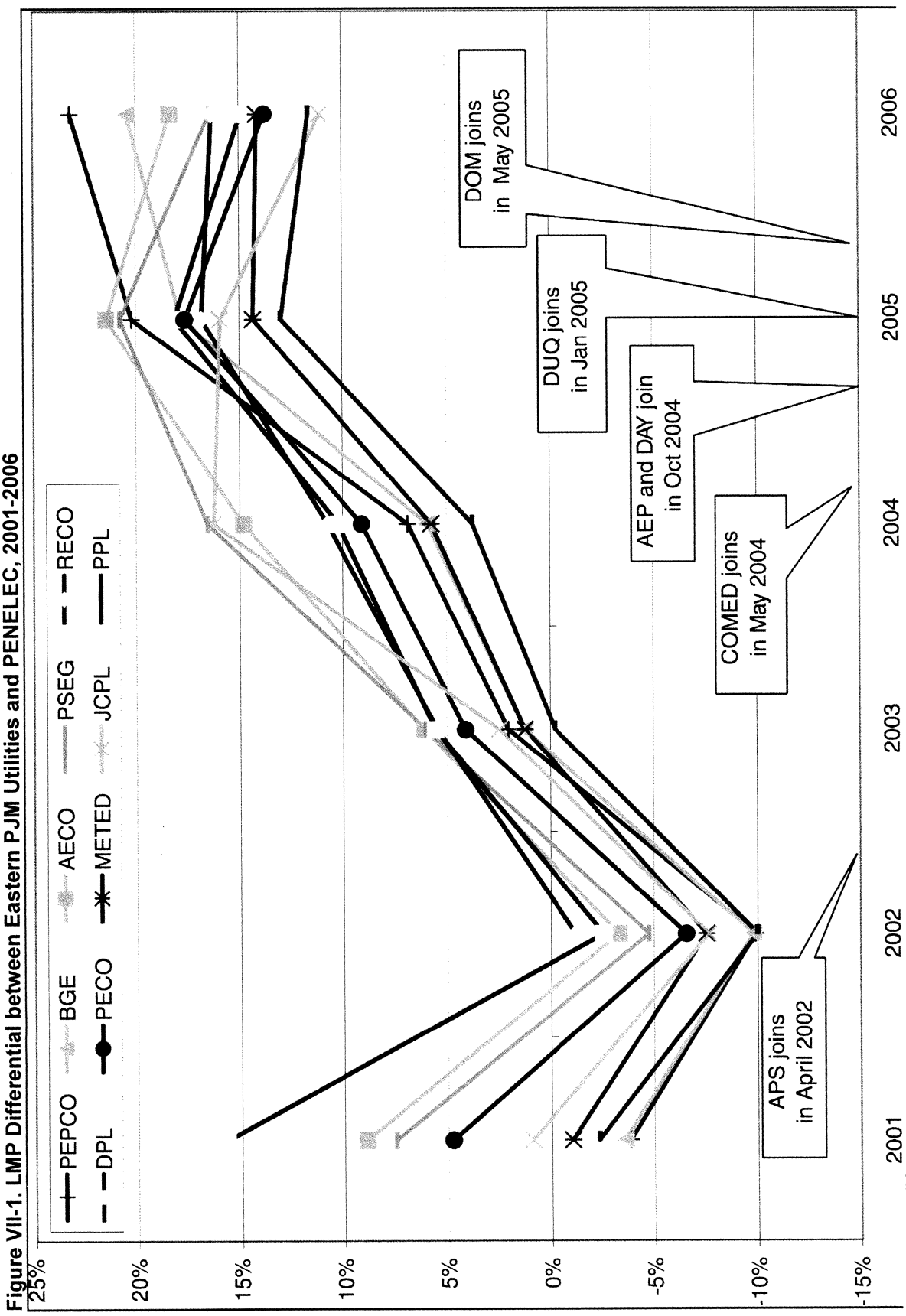


Figure VII-1. LMP Differential between Eastern PJM Utilities and PENELEC, 2001-2006

Data source: PJM.

Summary of Comments

NYPSC and NYISO expressed concern about the accuracy of the data underlying the Congestion Study, noting that the modeling results indicated, contrary to NYISO's 2005 State of the Market Report, that the amount of congestion in upstate New York is relatively high compared to the amount of congestion in southeastern New York.

DOE Response

NYISO market data on congestion are not directly comparable to the Congestion Study's simulation results for several reasons. First, NYISO's 2005 State of the Market Report relies on real-time congestion data. The Congestion Study simulations reflect forward-looking unit commitment in response to predictable loads and therefore should be compared to day-ahead data.[46] Analysis of historical day-ahead LBMP prices indicates that price differences in upstate New York (Zone A [West] to Zone G [Hudson Valley], and Zone G to Zone I [Dunwoodie]) are becoming increasingly more significant compared to price differentials in downstate New York (Zone I to Zone J [New York City]) as shown in Table VII–2. This indicates that transmission limitations of the upstate system in NYISO are becoming at least as influential as downstate limitations.

Table VII-2. Historical Day-Ahead LBMPs and NYISO Price Differentials

	Zone A (West)	Zone G (Hudson Valley)	Zone I (Dunwoodie)	Zone J (NYC)	A to G Differential	G to I Differential	I to J Differential
2004	44.75	52.44	53.44	63.02	7.69	1.00	9.58
2005	64.80	78.90	81.26	93.17	14.10	2.36	11.91
2006	50.24	64.07	65.49	70.90	13.82	1.42	5.41

Data source: NYISO.

Second, the Congestion Study simulations reflect ''planning'' interface definitions and limits published by NYISO whereas NYISO's 2005 State of the Market Report is based on operational interface limits. Table VII–3 presents a comparison of planning limits and operating limits. For the upstate system, the planning limits are more stringent than the operating limits. For example, the planning limit reported by NYISO for Moses South used in the Congestion Study ranges between 1300 MW and 1700 MW. However, the operating limit for that interface used in NYISO operations ranges between 2550 MW and 2875 MW. On the other hand, for the downstate system, the planning limits are less stringent than the operating limits. For example, the planning limit reported by NYISO for UPNY-ConEd used in the Congestion Study ranges between 4850 MW and 5750 MW, whereas the operating limit for that interface used in NYISO operations ranges between 3300 MW and 3950 MW. The combination of looser upstate operational limits and tighter downstate operational limits compared with the planning limits employed in the Congestion Study results in a shift in congestion in the Congestion Study's modeling from downstate to upstate New York.

Table VII-3. NYISO Planning and Operating Limits for Interfaces

Interface	Planning Interface Limits		Operating Limits	
	Normal	Emergency	Normal	Emergency
Dysinger East	2,400	2,475	2,850	3,175
West Central	1,100	1,175	1,775	2,075
Volney East	4,325	4,400	NA	NA
Moses South	1,300	1,700	2,550	2,875
Central East	2,625	2,800	2,975	3,400
Total East	5,150	5,800	5,075	5,975
UPNY-SENY	4,475	5,125	NA	NA
UPNY-Coned	4,850	5,750	3,300	3,950
Millwood South	8,025	11,150	NA	NA
Dunwoodie South	4,025	4,025	3,775	3,800

NA: Indicates that the interface is not being monitored in NYISO operations.

Sources: NYISO, 2004 Intermediate Area Transmission Review of the New York State Bulk Power Transmission System (Study Year 2009), March 10, 2005, Table 2.6(A); NYISO Operating Study Summer 2006, Appendix H.

[46] NYISO operates both a day-ahead LMP energy market and a real-time LMP energy market. NYISO uses the terminology ''location-based marginal prices'' or LBMP instead of LMP.

Third, NYISO monitors only open interfaces (except for Total East). The Congestion Study simulations followed NYISO planning documents and modeled both open and closed interfaces.

Finally, historical congestion data referenced in NYISO's 2005 State of the Market Report do not reflect 1000 MW of new generation capacity added in Zone J in 2006. The Congestion Study simulations reflect these and other future capacity additions.

Summary of Comments

NYPSC claimed that Appendix I and Section 12B of the memorandum entitled ''GE–MAPS Input Assumptions: Eastern Interconnect'' (GE–MAPS Assumptions Memo) appear to misrepresent NYISO's 118 percent installed capacity (ICAP) requirement by applying that requirement only to upstate load instead of to State-wide load.

DOE Response

This is a reporting error and the capacity balance for NYISO as a whole provided in the referenced memorandum is incorrect. Nonetheless, ICAP requirements do not explicitly affect system simulations; they affect the timing of the need for new capacity additions. The NYISO system as modeled in the Congestion System is balanced. Thus, this reporting error did not affect the analysis and findings of the Congestion Study.

Summary of Comments

NYPSC commented that Section 7 (Capacity Additions and Retirements) of the GE–MAPS Assumptions Memo employs a $65/kW-year cost for gas turbines, which appears to be very low.

DOE Response

The Department agrees that this estimate seems low, especially in light of a recent increase in costs. However, $65/kW-yr was used as a generic carrying charge for new peaking capacity. With $10/kW-yr fixed operating and maintenance cost, this would make the cost of new entry equal to $75/kW-yr (in real 2005 dollars, or $81.2/kW-yr in 2008 dollars). This is only moderately lower than the cost of new entry used in the NYISO ICAP manual for the New York Control Area demand curve for the 2007/2008 capability period ($87.6/kW-yr). Thus, the Department does not believe that increasing the cost of new entry would alter the conclusions in the Congestion Study.

Summary of Comments

NYPSC commented that Section 10 (External Region Supply) in the GE–MAPS Assumptions Memo ''scheduled'' flows from Hydro Quebec to New York, New England, and Ontario on 12 months of historical data that might not be typical.

DOE Response

The Department will work with NYPSC to develop more representative data for use in future congestion studies. However, the Department does not believe that changing these data would alter the conclusions in the Congestion Study.

Summary of Comments

NYPSC commented that Section 12C (Market Model Assumptions—ISO Boundaries) of the GE–MAPS Assumptions Memo cites high hurdle rates between NYISO and ISO New England (ISO–NE)[47] even though wheeling charges between the two areas were eliminated.

DOE Response

The Department recognizes the absence of wheeling charges between NYISO and ISO–NE. The Congestion Study used hurdle rates to reflect other inefficiencies in conducting transactions across market boundaries resulting from differences in market design.

Summary of Comments

NYPSC commented that Section 12D (Market Model Assumptions—Operating Reserves) of the GE–MAPS Assumptions Memo misstates how New York determines operating reserves.

DOE Response

The Congestion Study based operating reserve assumptions on the actual requirements instituted by each reliability region.

Summary of Comments

NJBPU argued that the Congestion Study fails to take into account reliability upgrades that PJM has already required in its existing Regional Transmission Expansion Program (RTEP) process and new upgrades continually being formulated as that process progresses. According to PSEG and PEC, the Department did not take sufficient account of PJM's proposed Reliability Pricing Model (RPM) or the effects of mandatory reliability-driven transmission reinforcements and upgrades, since such upgrades like the Neptune Project would reduce congestion. PSEG asserted that the Congestion Study's claim that ''addition of * * * generation capacity * * * will create additional congestion unless new transmission is also developed'' is erroneous and presumes the siting of remote generation that is far from load and located on the wrong side of the constraint. Additionally, PEC contended that RPM may spur the addition of new generation close to load centers that is not accounted for in the Congestion Study.

DOE Response

The model included planned capacity that is scheduled to come on line over the next several years. In addition, the model assumes that when additional capacity is needed, new capacity will be added at locations that have high locational prices, which are usually close to load. This tends to reduce modeled congestion. The PJM RPM process, if and when it is implemented, should have a similar result.[48] All transmission projects that are far enough along in the siting and construction process to be considered firm in the load flow, including the Neptune Project and any such projects approved in the RTEP process, are included.

PEC questioned why the re-powering of the Potomac River and Benning plants is considered uneconomical.

DOE Response

No assumptions were made in the Congestion Study with regard to these plants.

Summary of Comments

Toll Brothers claimed that the Congestion Study fails to take into account two assumptions that will reduce the need for increased transmission capacity from west to east in the PJM footprint: (1) the likely retirement of some generation facilities between the Midwest and the District of Columbia; and (2) increased restrictions on traditional air pollution emissions from coal-fired plants and the future regulation of greenhouse gas emissions, both of which would increase the cost of electricity generated by such plants. NYPSC asked if modeling accounted for compliance with the Clean Air Interstate Rule.[49]

[47] ISO–NE is the RTO serving Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

[48] FERC conditionally approved a settlement on RPM. 117 FERC ¶ 61, 331 (2006), *reh'g pending.* Since the issuance of that order, some parties that had provisionally agreed to support RPM have withdrawn their support.

[49] 70 FR 25,162 (May 12, 2005) (Environmental Protection Agency regulation of sulfur dioxide and nitrogen oxides).

DOE Response

The Congestion Study analysis included only planned retirements. Any attempt to forecast other retirements would be inappropriately speculative. Similarly, in the Eastern analysis, each unit in the model is assumed to comply with all promulgated air regulations, including the Clean Air Interstate Rule, and the Department did not speculate about potential future regulation.

C. Comments Specific to the Southern California Critical Congestion Area

Summary of Comments

CPUC argued that the Congestion Study exaggerated the significance of congestion into southern California, relying heavily on simulations instead of historical data and on information from project proponents. CPUC noted that one of the studies provided to DOE concluded, based on physical flow data from 1999 through 2005, that Arizona-to-southern California was not among the areas found to be experiencing heavy path usage. CPUC noted that the year 2008 simulations cited in the Congestion Study as indicating high economic significance of congestion from Arizona into southern Nevada and southern California actually show that the highest simulated congestion costs occur on lines from Arizona into southern Nevada.

DOE Response

The Department's identification of southern California as a Critical Congestion Area was based on a combination of factors, including the existence of historical congestion, projections that this historical congestion will worsen in the absence of remedial measures, as well as the economic and strategic significance of southern California to the Nation as a whole. Thus, while other areas in the Western Interconnection may have experienced higher levels of historical congestion, the Department believes that the totality of circumstances in southern California warrant its identification as a Critical Congestion Area and, as explained further in Section IX below, the draft designation of a National Corridor.

VIII. Draft Mid-Atlantic Area National Corridor

A. Alternatives and Recommendations

In the Congestion Study, the Department solicited alternatives and recommendations for National Corridor designations. The Department received a number of such alternatives and recommendations for the Mid-Atlantic Critical Congestion Area. Some commenters, including EEI and Exelon Corporation, recommended National Corridor designations in eastern New York and eastern PJM, citing the need to remedy the existing and growing congestion problems in the Mid-Atlantic Critical Congestion Area, but they did not specify specific boundaries.[50]

Based on its regional transmission planning studies, PJM recommended three specific National Corridors in the Mid-Atlantic area. According to PJM, a National Corridor is needed in a contiguous area of southeastern Pennsylvania, northern West Virginia, western Maryland, and northern Virginia, because in the absence of construction of a new high-voltage transmission circuit within this area, PJM and North American Electric Reliability Corporation (NERC)[51] reliability planning criteria will be violated by 2011. The other two National Corridors recommended by PJM are: (1) a contiguous area of eastern Ohio, much of Pennsylvania, and part of northern New Jersey; and (2) a contiguous area of eastern Maryland, all of Delaware, and parts of eastern Pennsylvania and southern New Jersey. These two National Corridors are needed, according to PJM, to ensure that planning and development of required transmission solutions can be completed in time to prevent violations of PJM and NERC reliability planning criteria that would otherwise occur by 2014.

AEP recommended a National Corridor to encompass the general anticipated route of a transmission line it is proposing to build between West Virginia and Maryland. Allegheny recommended a National Corridor to encompass the general anticipated route of a transmission line that it and Dominion Virginia Power (Dominion) are proposing to build between southwestern Pennsylvania and northern Virginia.

The Governor of the State of West Virginia commented that development of transmission to supply regions north and east of West Virginia with low-priced clean-coal generation and renewable generation from within, as well as south and west of, his State would result in economic and reliability benefits for all involved regions. Thus, noting the time it can take to site a transmission line and the urgency of addressing the transmission problems, the Governor recommended designation of a National Corridor that would encompass the AEP project as well as the Allegheny-Dominion project.

New York Regional Interconnect Inc. (NYRI) recommended a National Corridor to encompass the general anticipated route of a transmission line it has proposed to build from Marcy, New York to New Windsor, New York.

The City of New York argued that growing energy demand, national security concerns, the unique nature of electricity dependence in the Nation's financial and commercial capital, and fuel diversity and stability factors all warrant the designation of one or more National Corridors for New York City. Specifically, the City of New York recommended a National Corridor between the New Jersey segment of PJM and New York City.[52] The City of New York also recommended a National Corridor north and northwest of New York City within New York State. The City of New York further cited a recently enacted New York State statute that would deny the use of eminent domain powers to NYRI even if its proposed transmission project were to obtain a State permit as illustrative of the type of parochial concerns that may impede needed energy infrastructure improvements and that FPA section 216 was designed to address.

NYISO commented that the Congestion Study correctly included metropolitan New York within the Critical Congestion Area, and correctly identified the general location and direction of congestion in New York. NYISO explained that it conducts a Comprehensive Reliability Planning Process to assess reliability needs and that while its analysis indicates a reliability need for additional resources in southeast New York starting in 2008, sufficient market-based generation solutions have been submitted so that reliability criteria will be met through 2014. Thus, according to NYISO there is no need for a National Corridor from a reliability standpoint. However, NYISO also noted that ''New York's comprehensive and effective generation siting law expired in December 2002 and has not been re-enacted.'' NYISO further noted that while it provides up-to-date data to assist stakeholders in evaluating investments to address the economic effects of congestion, ''by design, the NYISO leaves the decision making on economic solutions for the Market Participants.''

[50] *See also* comments of National Grid, Potomac Holdings, Inc., and HQ Energy Services (US).

[51] NERC is the Electric Reliability Organization responsible for proposing and enforcing reliability standards for the bulk-power system throughout the United States subject to FERC approval under FPA section 215.

[52] *See also* comments of U.S. Rep. Hinchey (Recommending National Corridor between PJM and New York City as an alternative to National Corridor recommended by NYRI).

Numerous commenters recommended against one or more National Corridor designations for the Mid-Atlantic Critical Congestion Area. The Governor of the Commonwealth of Virginia commented that no National Corridor designations should be made before there had been adequate consultation with States.[53] PAPUC commented that while the preliminary data show that there is chronic congestion in some portions of the Mid-Atlantic region that deserves close attention by Federal and State regulators, additional analysis in consultation with States is needed before any National Corridor designation is made.[54] NYPSC and NJBPU opposed National Corridor designations, raising concerns about the data and methodology used in the Congestion Study and arguing that further analysis was needed.[55]

Many commenters recommended against designation of the National Corridor proposed by Allegheny,[56] and many commenters recommended against designation of the National Corridor proposed by NYRI.[57] These commenters raised concerns about the environmental and landowner effects of the particular projects proposed by Allegheny and Dominion and by NYRI and argued for consideration of non-transmission solutions to congestion.[58]

After reviewing the alternatives and recommendations provided, the Department believes that designation of a National Corridor for the Mid-Atlantic Critical Congestion Area may be warranted. In the following sections, the Department will detail its factual finding of the existence of constraints or congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area and explain the considerations that it believes warrant designation of a National Corridor for this area. Finally, the Department will delineate and explain the specific boundaries of the draft National Corridor.

B. Finding of Constraints or Congestion That Adversely Affects Consumers

The Congestion Study identified the Atlantic coastal area from metropolitan New York southward through northern Virginia as a Critical Congestion Area based on evidence of historical, persistent congestion caused by numerous well-known constraints that are projected to continue and worsen unless addressed through remedial measures. In conducting the Congestion Study, the Department identified these well-known constraints based on a review of extant transmission studies and expansion plans available prior to the publication of the Study. These constraints are listed in Table VIII–1, in no particular order, and their approximate locations are shown in Figures VIII–1 and VIII–2.

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Table VIII-1. Historical Constraints in PJM and NYISO

PJM	NYISO
1. Allegheny Power System to PEPCO and Dominion	1. Moses South Interface
2. The Western Interface and Central Interfaces of "Classic PJM"	2. Dysinger East Interface
3. The Eastern Interface of "Classic PJM"	3. West Central Interface
4. Branchburg Transformer	4. Central East and Total East Interface
5. PJM to New York City	5. UPNY-ConEd Interface
6. American Electric Power and First Energy to APS's Transformers	6. Westchester to New York City
7. Lines connecting ComEd to AEP along Lake Michigan	7. Westchester to Long Island
8. Homer City Transformer	
9. Erie East - Erie	
10. Kanawha - Mt. Funk	
11. North Carolina to Southern Virginia	
12. Constraints into Delmarva Peninsula	

Sources: DOE Congestion Study, pp. 22-23; data from PJM and NYISO.

[53] *See* DOE response, Section IV.B. above.

[54] *See* DOE response, Section II.A, II.D, and IV.A above.

[55] *See* DOE response, Sections II.B, II.D, IV.A, VII.A, and VII.B above.

[56] *See, e.g.,* comments of Citizens for Fauquier County, Clarke County Board of Supervisors, Fauquier County Architectural Review Board, Fauquier County Board of Supervisors, Fauquier County Historical Society, Foundation of the State Arboretum, Goose Creek Association, Historic Long Branch, Route 50 Corridor Coalition, Shenandoah Valley Network, Unison Preservation Society, Valley Conservation Council, Sierra Club, Virginia Local and Regional Organizations, Virginia Outdoors Federation, U.S. Rep. Wolf, VA Sen. Herring, Toll Brothers, and many individuals.

[57] *See, e.g.,* comments of ConEd, U.S. Rep. Hinchey, NY Sen. Bonacic, Delaware River Commenters, Upper Delaware Council, CARI, and many individuals.

[58] *See* DOE response, Sections II.B, III, and V above.

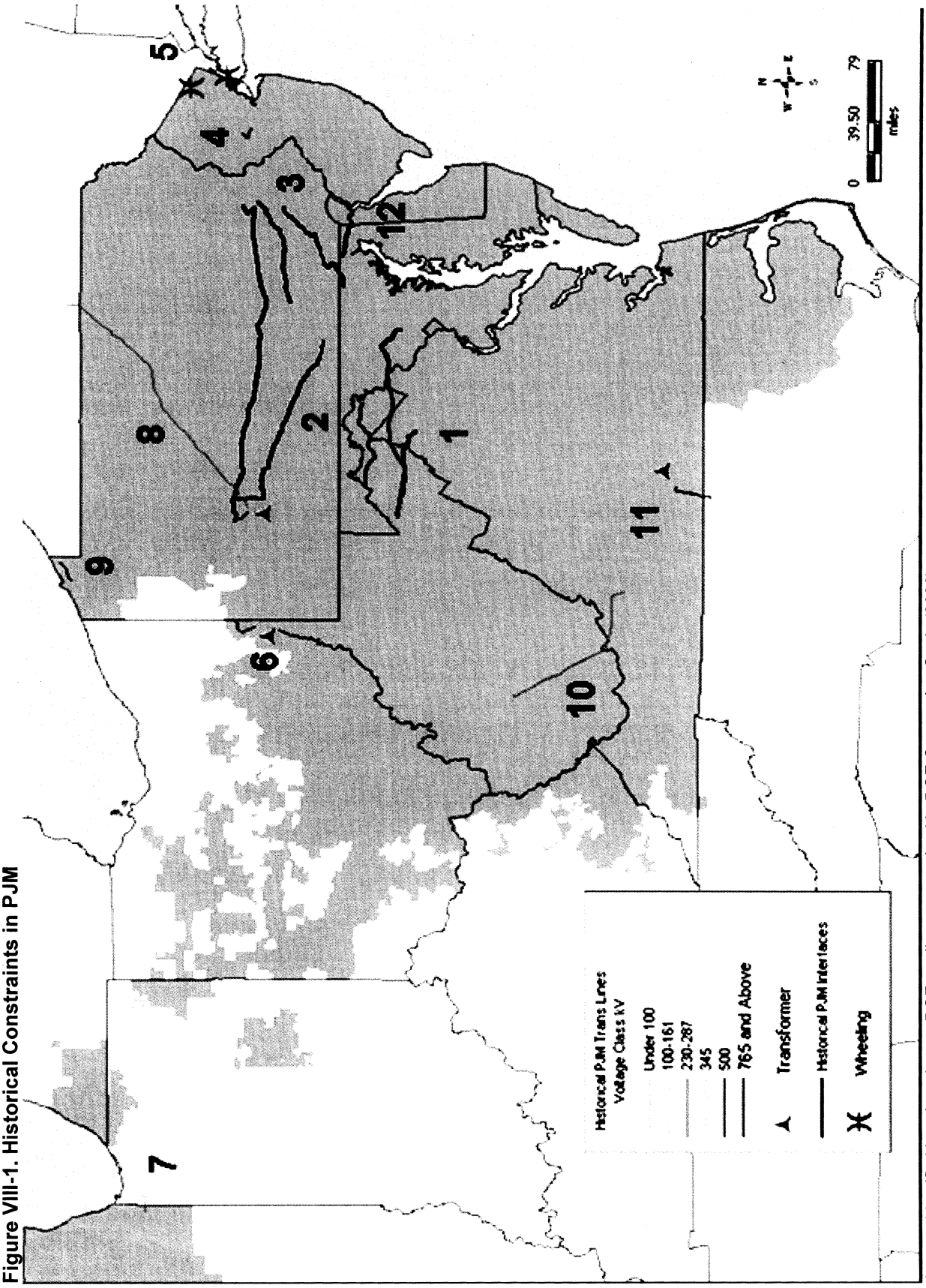


Figure VIII-1. Historical Constraints in PJM

Source: Identified by others in non-DOE studies; summarized in DOE Congestion Study (2006).

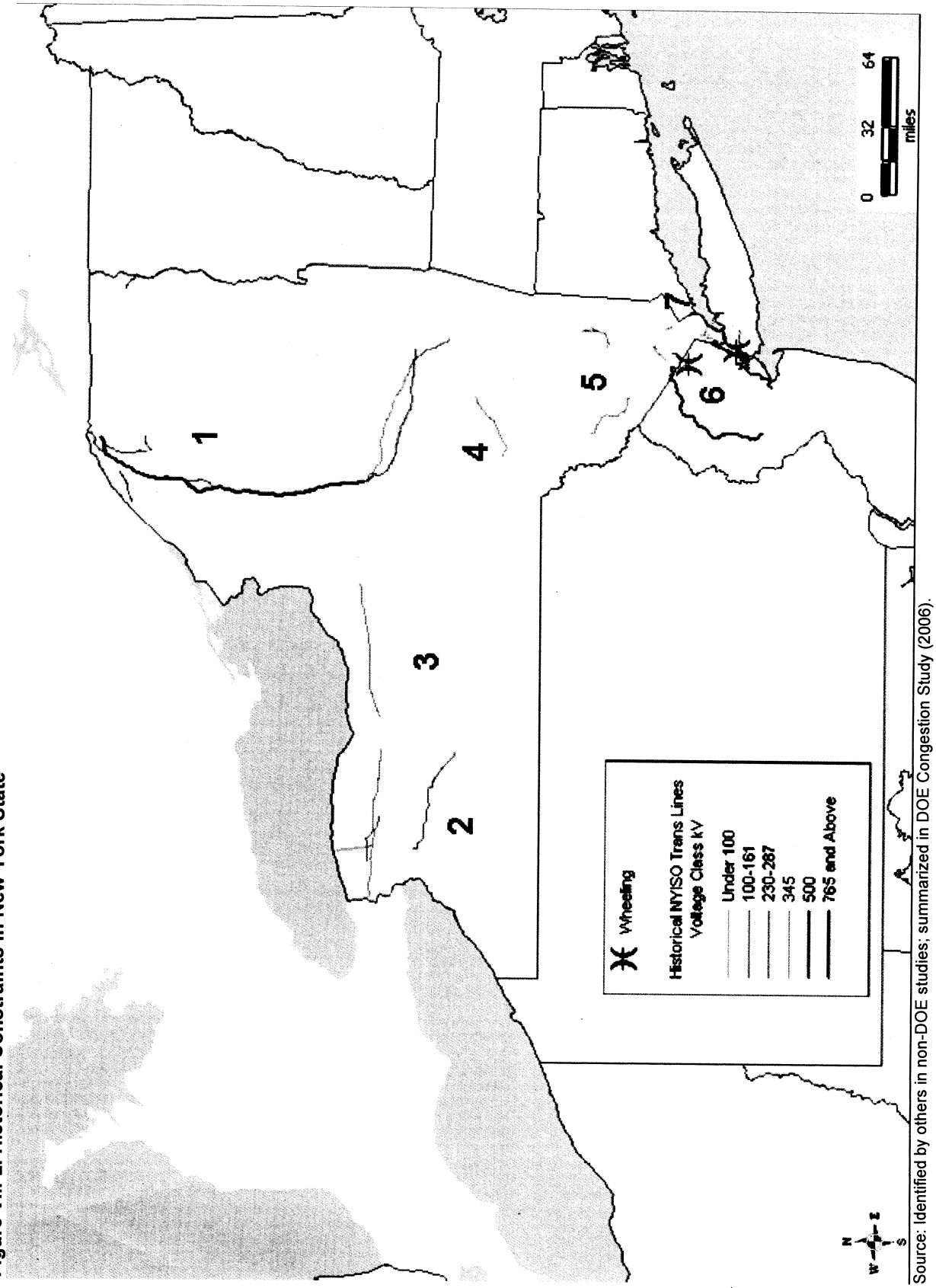


Figure VIII-2. Historical Constraints in New York State

Many of these constraints were binding, and thus produced congestion in years 2004, 2005, and 2006. (See Tables VIII–2 and VIII–3 for summaries of hourly data reported by PJM and NYISO.) Further, from 2004 through

2005 in the PJM footprint, a total of 19 constraints were binding more than 5 percent of the time (438 hours/year) in the day-ahead market, and six constraints were binding more than 5 percent of the time in the real-time market.[59] (See Table VIII–4.) In New York over the same period, 18 constraints were binding in the day-ahead market more than 5 percent of the time, and 62 constraints were binding more than 5 percent of the time in the real-time market. (See Table VIII–5.)

[59] Like NYISO, PFM operates both a day-ahead LMP-based energy market and a real-time LMP-based energy market.

Table VIII-2. Real-Time and Day-Ahead Constrained Hours in PJM, 2004-2006

Map ID	Congestion Area			Day-Ahead Constraints			Real-Time Constraints		
	Geographic Area	Description of Historically Constrained Elements	Transmission Elements	2004	2005	2006	2004	2005	2006
1	West VA to VA and MD	From Allegheny Power System (APS) to PEPCO and Dominion	Bedington-Black Oak	3,348	4,564	3,921	1,376	2,017	1,907
			APS South Interface (Doubs-Mt. Storm 500 KV line and Meadowbrook Mt. Storm 500)	0	441	639	20	45	265
2	Central PA to Eastern PA	The Western Interface and Central Interfaces of "Classic PJM:" Keystone & Conemaugh - Juniata, Conemaugh - Hunterstown, Doubs - Brighton, Conastone - Peachbottom	Keystone	241	43	137	57	0	28
			Hunterstown	20	125	315	20	108	65
			Conemaugh	0	31	0	0	72	0
			PJM Western Interface	35	586	970	98	371	316
3	Eastern PA to New Jersey	The Eastern Interface of "Classic PJM:" Wescosville & Juniata-Alburtis, TMI-Hosensack, Peach Bottom - Limerick, Peach Bottom-Keeney)	PJM Eastern Interface	1,318	1,369	335	315	148	11
4	Branchburg Transformer	Branchburg 230, Branchburg 500, Branchburg-Flagtown 230, Branchburg-Readington	Branchburg-Readington	0	207	710	137	244	485
			Branchburg-Flagtown 230	20	37	192	7	29	115
			Branchburg 500 kV 500-1	3,044	544	48	1,123	434	17
			Branchburg 500 kV 500-2	82	138	0	108	69	0
5	PJM to New York City	PJM to New York City	Hudson-Farragut	64	80	771	0	0	24
6	Ohio to West Virginia & PA	American Electric Power (AEP) and First Energy to APS transformers	Wylie Ridge 345/500 X-5	616	1,182	758	837	628	371
			Wylie Ridge 345/500 X-7	402	1,118	1,560	19	1,262	777
			Sammis-Wylie Ridge 345	0	5	0	3	63	113
			Kammer 765/500 Xfm	190	3,414	2,047	126	1,759	691
7	Illinois to Indiana	Lines connecting ComEd to AEP along Lake Michigan	Crete-St. John 345 B	1,092	790	7	223	26	5
			Dune Acres-Michigan C	137	23	51	0	58	82
			State Line-Wolf Lake 1	94	0	955	2	1	428
8	Central PA to Central NY	Homer City Transformer	Homer City-Watercure	626	1,833	0	10	29	53
			Homer City 345/230 Xfm	91	20	315	52	20	3
9	NW PA to W NY	Erie West to Erie South, Erie E. to Erie SE 230 kV	Erie West, Erie South, Erie East	14	613	42	2	269	31
10	WV to S. VA	Kanawha - Mt. Funk	Kanawha-Mt. Funk 345 BJF	0	16	0	36	66	14
			49305KANAWZ05M FUNK	0	0	0	0	0	0
11	North Carolina to Southern Virginia	Halifax-Person, Clover	Halifax-Person 230	0	5	0	0	0	0
			Clover 230/500 Xfm	0	27	0	0	74	16
12	Eastern PA to Delmarva Peninsula	Keeney, Redlion	Keeney 230 kV	0	4	0	1	5	10
			Keeney 500 kV	233	76	32	127	30	26
			Redlion 230 kV	75	209	0	0	3	0
			Redlion 500 kV	12	0	18	16	0	0

Notes: PJM provided the total hours binding for each constraint. No assumptions were made about the constraint duration.

Data source: PJM.

Table VIII-3. Real-Time and Day-Ahead Constrained Hours in NYISO, 2004-2006

Map ID	Congestion Area			Day-Ahead Constraints			Real-Time Constraints		
	Geographic Area	Description of Historically Constrained Elements	Transmission Elements	2004	2005	2006	2004	2005	2006
1	Flows from Northern NY	Moses South Interface	Moses South, Massena to Marcy, Moses to Adirondack	57	4	72	0	1	0
2	Flows into Western NY	Dysinger East Interface	Dysinger East, AES Somerset to Rochester, Niagara to Rochester, Stolle to Meyer	308	470	283	102	136	89
			West Central	6	34	305	38	21	57
			Stolle to Meyer	0	0	0	9	0	1
4	Flows from Western to Eastern NY	Central East and Total East Interface	Hudson-Farragut	64	80	771	0	0	24
			Leeds-Pleasant Valley	201	534	905	70	130	299
			CENTRAL EAST	704	938	1,823	200	321	594
5	Flows into NY Metro Region	UPNY-ConEd Interface	Ladentown to Buchanan South, Pleasant Valley to Wood St., Pleasant Valley to E. Fishkill, Pleasant Valley to Millwood, Roseton to E. Fishkill, Ramapo to Buchanan North	326	73	82	190	91	20
6	Westchester to NYC	Sprainbrook - Dunwoodie South	Rainey-Dunwoodie	2,027	1,142	1,708	0	0	434
			W. 49th St. 345 kV	1,468	2,126	1,291	0	0	209
			Rainey to Vernon 345 kV	4,124	3,111	2,786	0	0	104
			Sprainbrook - Dunwoodie South	144	2	0	0	673	117
7	Westchester to Long Island	ConEd-LIPA Interface	HUDAVE E-JAMAICA	2,417	2,432	411	0	0	2
			Dun-ShoreRd	5,599	6,219	7,807	5,040	5,196	4,932
			SprainBrook-East Garden City	167	102	25	122	0	94

Notes: For Day-Ahead, NYISO provided data on an hourly basis; therefore, this analysis assumes each constraint occurrence lasted one hour. For Real-Time, NYISO provided constraint data every 5 minutes on average; therefore, this analysis assumes each occurrence for Real-Time lasted 5 minutes.

Data source: NYISO.

Table VIII-4. Day-Ahead and Real-Time Constraints in PJM Binding More Than 5% of the Year (438 hours) During 2004-2006

Congestion Area			Day-Ahead Constraints			Real-Time Constraints		
Geographic Area	Description of Historically Constrained Elements	Transmission Elements	2004 Hours	2005 Hours	2006 Hours	2004 Hours	2005 Hours	2006 Hours
West VA to VA and MD	From Allegheny Power System (APS) to PEPCO and Dominion	Bedington-Black Oak	3,348	4,564	3,921	1,376	2,017	1,907
		APS South Interface (Doubs-Mt. Storm 500 KV line and Meadowbrook Mt. Storm 500)	0	441	639	20	45	265
Central PA to Eastern PA	The Western Interface of "Classic PJM"	PJM Western Interface	35	586	970	98	371	316
Eastern PA to New Jersey	The Eastern Interface of "Classic PJM": Wescosville & Juniata-Alburtis, TMI-Hosensack, Peach Bottom-Limerick, Peach Bottom-Keeney	PJM Eastern Interface	1,318	1,369	335	315	148	11
Branchburg Transformer	Branchburg 230, Branchburg 500, Branchburg-Readington	Branchburg 500 kV 500-1	3,044	544	48	1,123	434	17
		Branchburg 500 kV 500-2	82	138	0	108	69	0
		Branchburg-Readington	0	207	710	137	244	485
PJM to New York City	PJM to New York City	Hudson-Farragut	64	80	771	0	0	24
Ohio to West Virginia & PA	American Electric Power (AEP) and First Energy to APS transformers	Wylie Ridge 345/500 X-5	616	1,182	758	837	628	371
		Wylie Ridge 345/500 X-7	402	1,118	1,560	19	1,262	777
		Kammer 765/500 Xfm	190	3,414	2,047	126	1,759	691
Illinois to Indiana	Lines connecting ComEd to AEP along Lake Michigan	Crete-St. John 345 B	1,092	790	7	223	26	5
		State Line-Wolf Lake 1	94	0	955	2	1	428
Central PA to Central NY	Homer City-Watercure	Homer City-Watercure	626	1,833	0	10	29	53
NW PA to W NY	Erie West to Erie South, Erie E. to Erie SE 230 kV	Erie West, Erie South, Erie East	14	613	42	2	269	31

Notes: PJM provided the total hours binding for each constraint. No assumptions were made about the constraint duration.

Sources: PJM. Day-Ahead Data: http://www.pjm.com/markets/energy-market/day-ahead.html. Real-Time Data: http://www.pjm.com/markets/energy-market/real-time.html.

Table VIII-5. Day-Ahead and Real-Time Constraints in NYISO Binding More Than 5% of the Year (438 hours) During 2004-2006

Congestion Area			Day-Ahead Constraints			Real-Time Constraints		
Geographic Area	Description of Historically Constrained Elements	Transmission Elements	2004 Hours	2005 Hours	2006 Hours	2004 Hours	2005 Hours	2006 Hours
Flows into Western NY	Dysinger East Interface	Dysinger East	308	470	283	102	136	89
Flows from Western to Eastern NY	Central East and Total East Interface	Hudson-Farragut	64	80	771	0	0	24
		Leeds-Pleasant Valley	201	534	905	70	130	299
		Central East	704	938	1,823	200	321	594
Westchester to NYC	Sprainbrook - Dunwoodie South	Rainey-Dunwoodie	2,027	1,142	1,708	0	0	434
		W. 49th St. 345 kV	1,468	2,126	1,291	0	0	209
		Rainey to Vernon 345 kV	4,124	3,111	2,786	0	0	104
		Sprainbrook - Dunwoodie South	144	2	0	0	673	117
Westchester to Long Island	ConEd-LIPA Interface	HudAve E-Jamaica	2,417	2 432	411	0	0	2
		Dun-Shore Rd	5,599	6,219	7,807	5,040	5,196	4,932

Notes: For Day-Ahead, NYISO provided data on an hourly basis. This analysis assumes each constraint occurrence lasted one hour. For Real Time, NYISO provided constraint data approximately every 5 minutes. If the data showed a congestion cost for a 5-minute segment, the analysis assumed the constraint lasted for 5 minutes.

Source: NYISO, http://www.nyiso.com/public/market_data/power_grid_data.jsp.

The modeling directed by DOE for the Congestion Study projected that some of these constraints will continue to be problems in 2008, along with other additional constraints. DOE found that looking across the several Congestion Study scenarios, 12 constraints were of particular interest in the PJM footprint and 21 in New York. These constraints are listed in Tables VIII–6 and VIII–7 respectively. DOE's analysis indicates that five of the ten most problematic constraints in the Eastern Interconnection are in New York, and the other five are in the PJM footprint.

Table VIII-6. Top Constraints in PJM Based on DOE Congestion Study Projections for 2008

Constraint Name
APS South Interface
INTERFACE= PJM - WESTERN
148 - Cloverdale-Lexington 5
1-TRIPS,8MT STM -01PRNTY - 1
461 - Mt. Storm-Doubs 500
INTERFACE= PJM - CENTRAL
1130 - Wylie Ridge 345/500 X
1530 - Elrama-Mitchell 138
78 - Black Oak-Bedington 500
1386 - Oglesby-Mazon 138
RAMAPO 1000MW WHEEL
NFG 23 - Roseland-Cedar Grove
130 - Cedar Grove-Clifton 23

Table VIII-7. Top Constraints in NYISO Based on DOE Congestion Study Projections for 2008

Constraint Name
7 I/F MOSES SOUTH CLOSE HI
11 I/F UPNY - SENY CLOSE LO
14 I/F WEST CENTRAL OP LO
1TRIP Dun-ShoreRd SpBrk-EGC
1TRIP Leeds-Pleasant Val HI
1TRIP Reynld-GBush NScot-Alp
1-TRIPS,HMP HRBR-DVNPT NK- 1
1TSPBKTRMT:DUN NO2R-S CREEK
7 I/F CENTRAL EAST LO
Actual:DUN SO1R-E179 ST
Actual:E179 ST-HG 6
Actual:FR-KILLS-WILOWBK2
Actual:GOWNUS1R-GRENWOOD
Actual:GRENWOOD-VERNON-E
Actual:HUDAVE E-JAMAICA
Actual:V STRM P-JAMAICA
CP10_12_1-tips, ReacBus-Dvnp
CP10_20_E179St_Hg4_E179St_Hg
FARRGUT 1000MW WHEEL
NFG7010 - IMO - ADIRONDACK
NFG7105 - ADIRONDACK - IMO
ONTARIO-NEW YORK ST LAW INT

The existence of constraints causing persistent congestion is further evidenced by regional differences in generation capacity factors within the PJM and NYISO footprints. In a regional-scale electricity market, generators producing electricity at lower costs will typically be used at higher capacity factors than generators with higher production costs, except when such efficient use of resources is not feasible due to transmission limitations and the need to operate some generation capacity close to load centers to ensure voltage stability in those areas.[60] Accordingly, the Department undertook an analysis to identify areas within or near the PJM footprint and New York State with underutilized lower cost generation, and to identify the constraints that limit flows of lower-priced electricity from generation-rich areas to generation-short areas with higher prices.

PJM data for 2004, 2005, and 2006 show that the utilization rate (or capacity factor) for large generators (>200MW) in the $30–40/MWh cost category in the western portion of PJM's footprint was 63, 61, and 67 percent on average respectively (Table VIII–8); DOE projections show a slightly higher figure for 2008 (also Table VIII–8). By comparison, the average capacity factor for generation in the same cost class in the eastern portion of PJM's footprint was 74, 79, and 77 percent in 2004, 2005, and 2006 respectively and is projected by DOE at over 79 percent for 2008. (See Table VIII–9.) In DOE's projections for 2008, similar differentials in capacity factor are seen between the western and eastern portions of PJM's footprint for higher cost groups of generators (i.e., $40–50/MWh, $50–60/MWh, $60–80/MWh, and $80–90/MWh). The western portion of PJM's footprint has no operating units above $100/MWh; the eastern portion does, and they are used when needed. (See Figure VIII–3.)

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[60] Regulations governing the mix of generation supplied by load-serving entities to consumers, such as State renewable portfolio standards, could also affect the capacity factors for higher cost generation, but do not appear relevant here.

Table VIII-8. Capacity Factors for Large Generators in Western PJM (>200 MW) in $30-40/MWh Cost Class, 2004-2006, and Projected by DOE for 2008

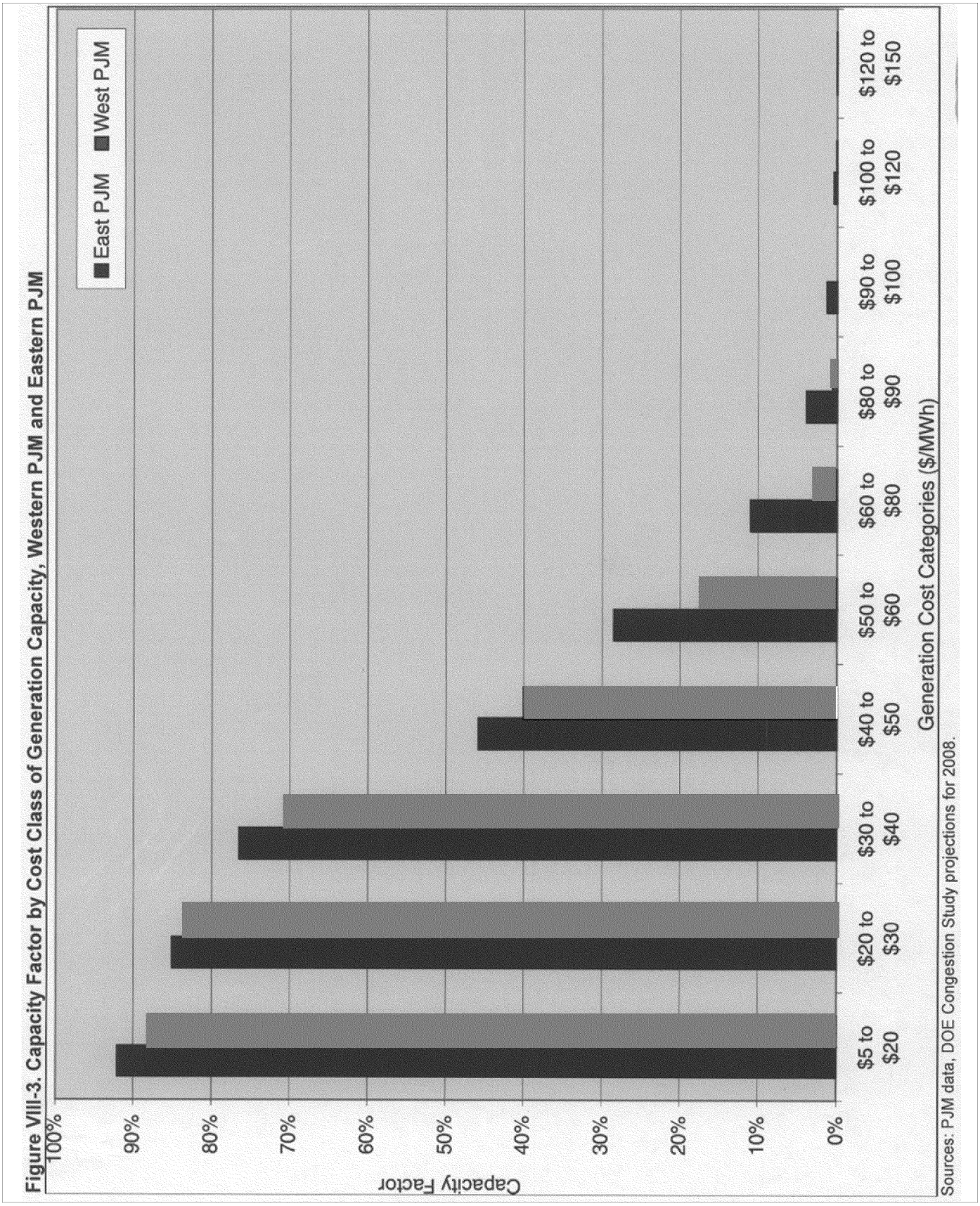
Plant	Zone	Capacity (MW)	Actual Capacity Factor, 2004	Actual Capacity Factor, 2005	Actual Capacity Factor, 2006	Simulated Capacity Factor, 2008
Armstrong	APS	343	69%	67%	61%	57%
Cardinal	AEP	1,800	68%	71%	69%	77%
Conesville	AEP	1,695	53%	44%	66%	70%
Hatfield's Ferry	AEP	1,466	60%	62%	69%	70%
J M Stuart	DAY	2,340	71%	70%	74%	68%
Kanawha River	AEP	390	58%	61%	62%	63%
Muskingum River	AEP	790	62%	56%	59%	58%
Willow Island	APS	235	29%	29%	34%	39%
Subtotal	**PJM West**	**9,059**	**63%**	**61%**	**67%**	**68%**

Sources: PJM data; 2008 projections for DOE Congestion Study.

Table VIII-9. Capacity Factors for Large Generators in Eastern PJM (>200 MW) in $30-40/MWh Cost Class, 2004-2006, and Projected by DOE for 2008

Plant	Zone	Capacity (MW)	Actual Capacity Factor, 2004	Actual Capacity Factor, 2005	Actual Capacity Factor, 2006	Simulated Capacity Factor, 2008
Brandon	BGE	1,300	75%	75%	81%	77%
Chalk Point	PEPCO	683	71%	67%	62%	75%
Chesterfield	DOM	1,250	66%	75%	73%	73%
Dickerson	PEPCO	546	69%	70%	64%	78%
Keystone	PENELEC	1,700	83%	91%	82%	80%
Montour	PPL	1,495	75%	85%	87%	85%
Wagner	BGE	324	64%	78%	59%	84%
Subtotal	**PJM East**	**7,298**	**74%**	**79%**	**77%**	**79%**

Sources: PJM data; 2008 projections for DOE Congestion Study.



These historical data and projections confirm that there are differences in capacity factors between the eastern and western portions of PJM's footprint, and that the eastern portion consistently relies on a more-expensive-to-run mix of

generation sources than the western portion. This is a direct result of transmission constraints that prevent lower-priced electricity from the western portion of the PJM footprint from reaching load centers in the eastern portion during the hours the constraints are binding.

DOE also examined the data from its projections for 2008 to identify the transmission constraints that most limited flows from the western portion of PJM's footprint (and from the eastern portion of the Midwest ISO's footprint) to serve loads in the eastern portion of PJM's footprint. The constrained facilities are listed in Table VIII–10, and the approximate locations of those constraints are shown in Figure VIII–4.

Table VIII-10. Transmission Constraints Limiting the Ability To Use Generation in West PJM and East MISO To Serve PJM Loads in 2008

ISO	Constraint Number	Constraint	Constraint Type	Class	Congestion	Symbol in Map
PJM	1	147 - Cloverdale-Lexington 5	Line	Source & Sink		—
PJM	2	178 - Crete-E. Frankfort 345	Line	Source		—
PJM	3	97 - Benton Harbor-Palisades	Line	Source		—
PJM	4	1-TRIPS,8MT STM -01 PRNTY - 1	Line	Source & Sink	Top Constraint	—
PJM	5	78 - Black Oak-Bedington 500	Line	Source & Sink	Top Constraint	—
PJM	6	180- Crete-St. John 345 B	Line	Source		—
PJM	7	314 - Homer City-Shelocta 23	Line	Source & Sink		—
PJM	8	636O1SOCIALBLAIRSVL	Line	Source & Sink		—
PJM	9	FG 1713 DICKERSN-PL VIEW 230	Line	Source & Sink		—
PJM	10	460- Mt. Storm-Doubs 500	Line	Source & Sink		—
PJM	11	650 - Seneca-Maple 138	Line	Source & Sink		—
PJM	12	188 - Danvilie-East Danville	Line	Sink		—
PJM	13	1-TRIP EDISON-MDWRD PBRG-TRN	Line	Sink		—
PJM	14	299- Halifax-Person 230	Line	Sink		—
PJM	15	70- Branchburg-Flagtown 230	Line	Sink		—
PJM	16	751 - Warren-Falconer 115	Line	Sink		—
PJM	17	Croyden-Burlington	Line	Sink		—
PJM	18	Mickleton-Delco Tap	Line	Sink		—
PJM	19	N PHILADELPH WANEETA ACTUAL	Line	Sink		—
PJM	20	130- Cedar Grove-Clifton 23	Line	Sink	Top Constraint	—
PJM	21	Juniata-Lewiston	Line	Sink		—
PJM	22	NFG 23 - Roseland-Cedar Gro	Line	Sink	Top Constraint	—
PJM	23	50- Axton 765/138 Xfm	Transformer	Source & Sink		⅄
PJM	24	1-TRIPS,08SGROVE-08SGROVE- 1	Transformer	Source		⅄
PJM	25	1130- Wylie Ridge 345/500 X	Transformer	Source & Sink	Top Constraint	⅄
PJM	26	317 - Homer City 345/230 Xfm	Transformer	Sink		⅄
PJM	27	690 - St. Clair 345/230 Xfm	Transformer	Sink		⅄
PJM	28	750- Waldwick-Hawthome 230	Transformer	Sink		⅄
PJM	29	1228 - Clover 230/500 Xfm	Transformer	Sink		⅄
PJM	30	APS South Interface	Interface	Source & Sink	Top Constraint	——
PJM	31	INTERFACE= PJM - CENTRAL	Interface	Source & Sink	Top Constraint	——
PJM	32	INTERFACE= PJM - EASTERN	Interface	Source & Sink		——
PJM	33	INTERFACE= PJM - WESTERN	Interface	Source & Sink	Top Constraint	——
PJM / NYISO	34	FARRGUT 1000MW WHEEL	Wheeling	Source & Sink		⋓
PJM / NYI5O	35	RAMAPO 1000MW WHEEL	Wheeling	Source & Sink	Top Constraint	⋓

Source: DOE Congestion Study Projections for 2008.

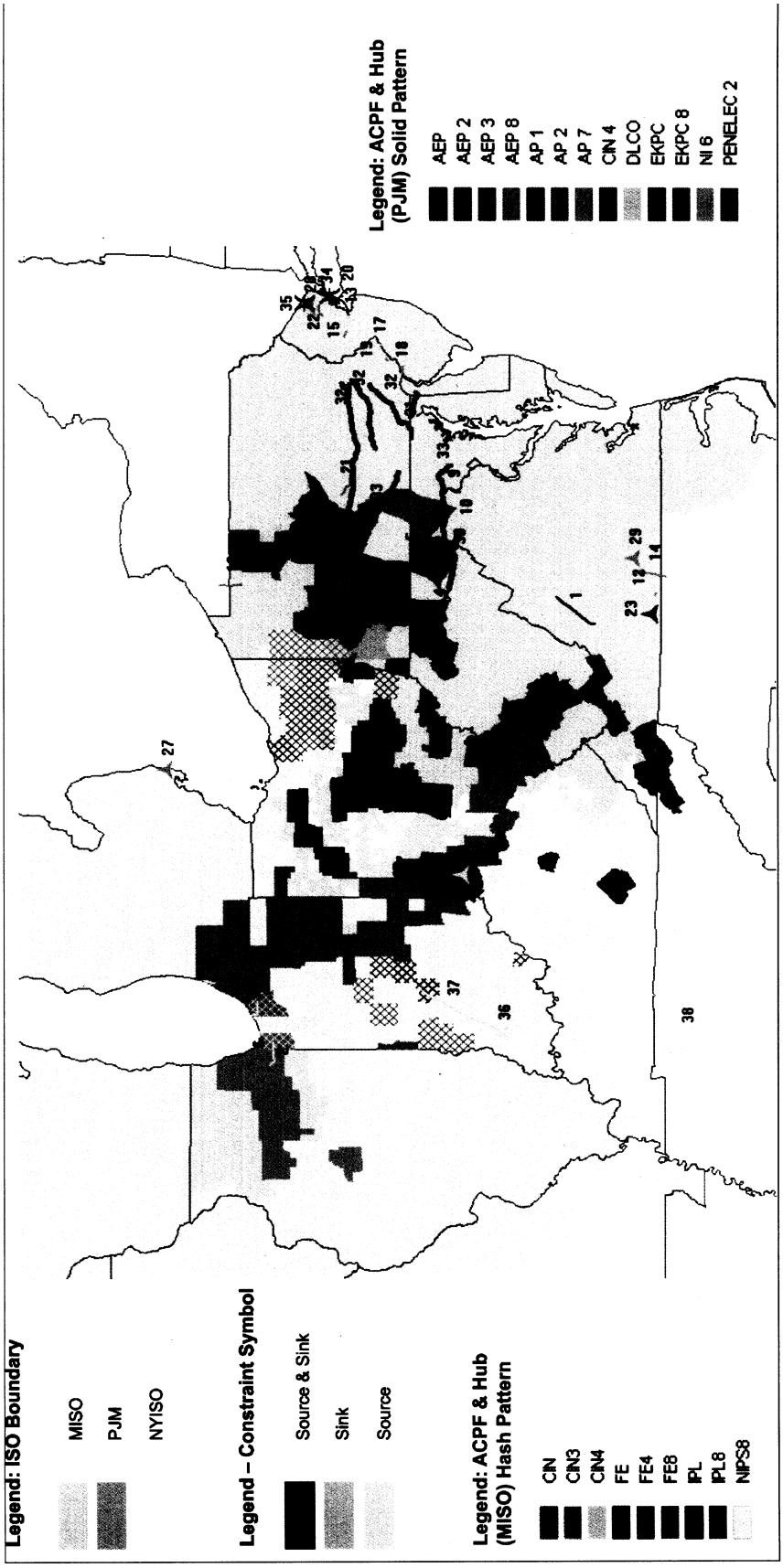


Figure VIII-4. Areas with Available Lower-Cost Generation in PJM and MISO and Transmission Constraints Limiting Electricity Transfers to Eastern PJM Load Centers

A somewhat similar situation exists in New York State. For purposes of this analysis, DOE divided the State into three geographic areas: Upstate West (NYISO zones A through E), Upstate East (NYISO Zones F through I), and

Downstate (NYISO Zones J and K). (See Figure VIII–5.) Downstate has almost no thermal capacity below $60/MW, whereas Upstate West has about 5750 MW and Upstate East has about 2600 MW at $60/MW or lower. (See Figure VIII–6.) In DOE's projections for 2008, however, the below-$60/MW thermal units are shown as operating at very high capacity factors already. (See Figure VIII–7.) The effects of transmission congestion start to become apparent in the $60–70/MW class, where lower-cost capacity in Upstate East is available but its output is not always deliverable to Downstate. Downstate has more than 14,250 MW of capacity with production costs of $70/MW or higher (up to more than $200/MW), whereas Upstate East and Upstate West combined have only about 5100 MW at $70/MW or higher. Further, according to both historical data and DOE's projections for 2008, the units in Downstate in all classes with production costs above $70/MW almost always operate at higher capacity factors than in the other two areas. (See Table VIII–11.)

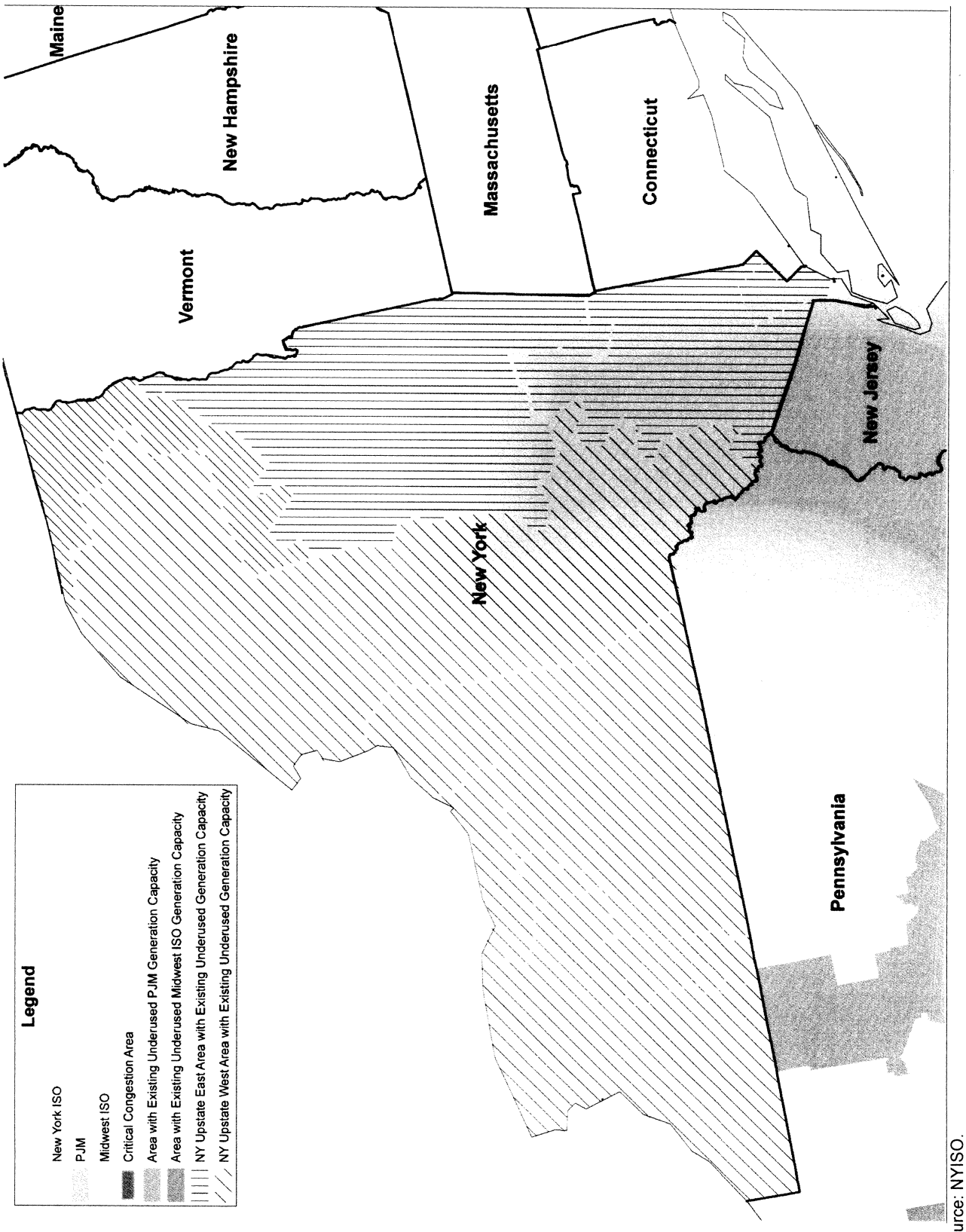
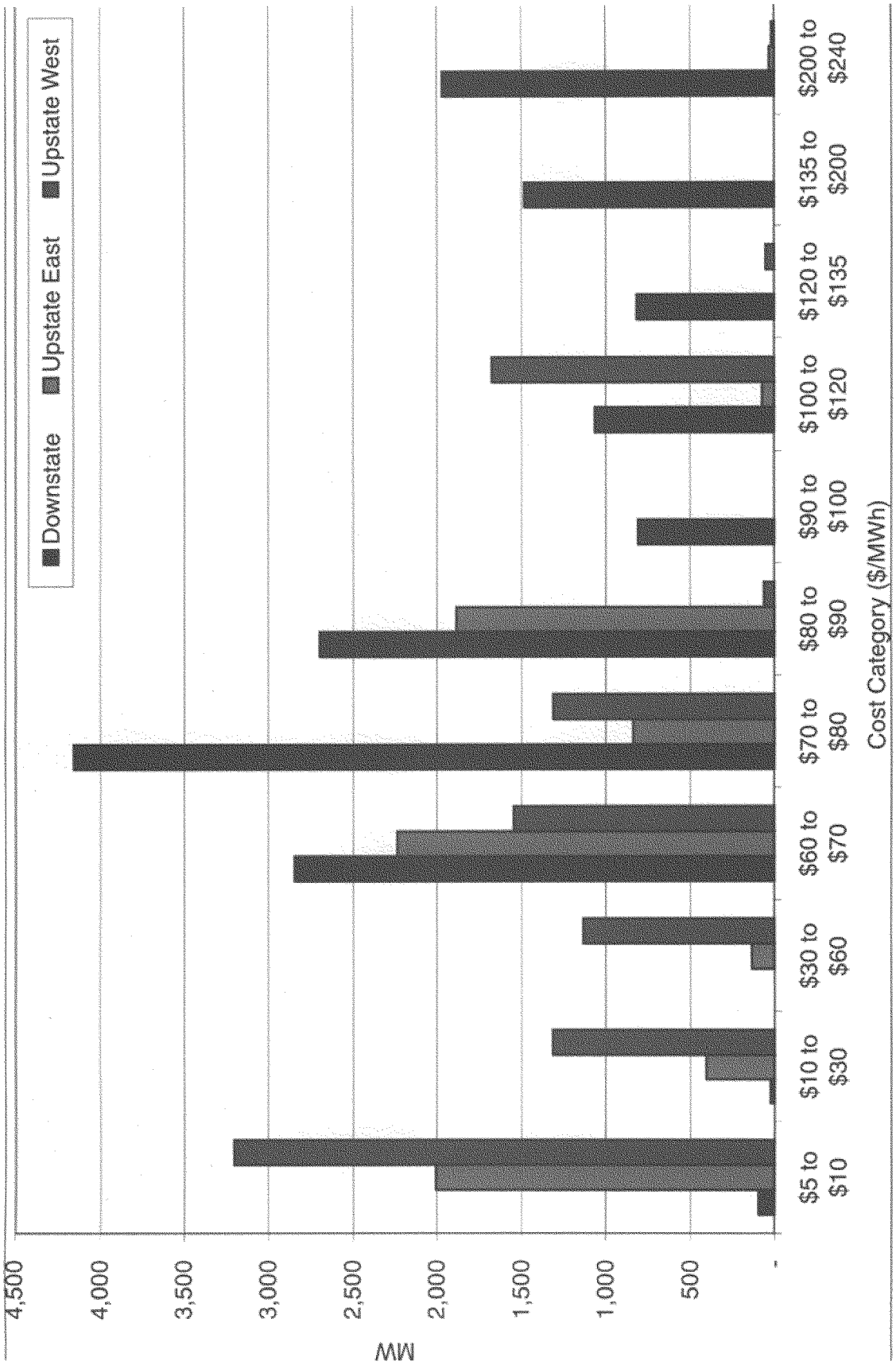


Figure VIII-5. Areas in New York with Available Lower-Cost Generation

Data source: NYISO.

Figure VIII-6. New York State Installed Thermal Capacity by Region and by Production Cost Class



Source: Input data for DOE Congestion Study, 2008 base case.

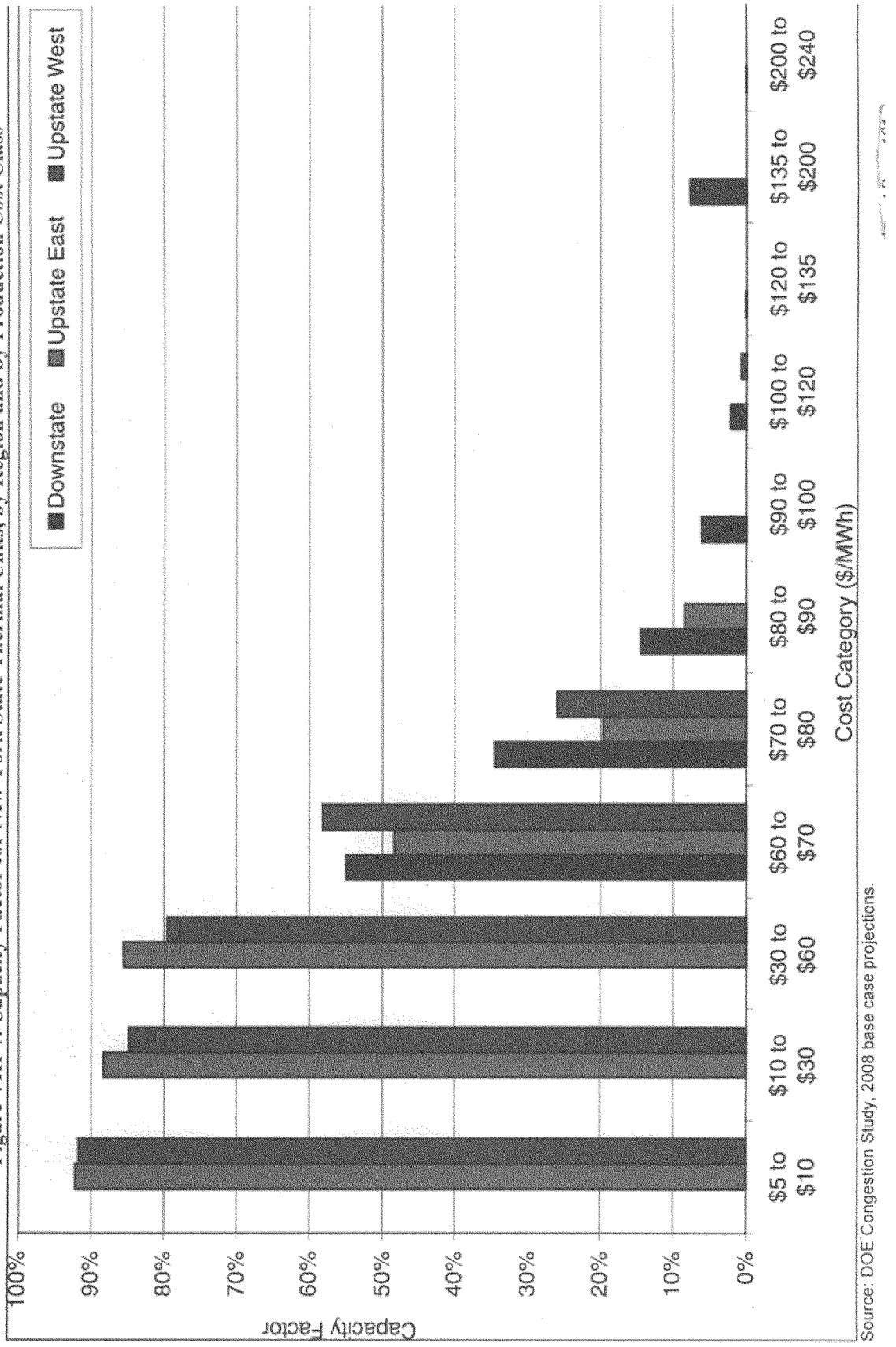

Figure VIII-7. Capacity Factor for New York State Thermal Units, by Region and by Production Cost Class
Downstate
Upstate East
Upstate West
Capacity Factor
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
$5 to $10
$10 to $30
$30 to $60
$60 to $70
$70 to $80
$80 to $90
$90 to $100
$100 to $120
$120 to $135
$135 to $200
$200 to $240
Cost Category ($/MWh)
Source: DOE Congestion Study, 2008 base case projections.

Table VIII-11. Historical and Projected Capacity Factors for New York Power Plants, by Location and Cost per Megawatt

Cost Category ($/MW)	Capacity Factor (Percent)								
	Downstate Plants			Upstate East Plants			Upstate West Plants		
	2004	2005	2008 Simulated	2004	2005	2008 Simulated	2004	2005	2008 Simulated
$60-70	60	60	55	19	21	48	32	43	58
$70-80	28	30	34	18	16	20	32	29	26
$80-90	29	36	14	23	22	8	0	0	0
$100-120	21	17	6	0	0	0	3	7	0
$120-135	3	6	2	0	0	0	0	0	1
$135-200	1	2	0	0	0	0	0	0	0

Sources: Historical data from NYISO; projections for 2008 from DOE Congestion Study.

DOE reviewed both historical data and its projections for 2008 to identify the constraints that appear most critical in limiting the use of generation in upstate New York, Ontario, and Pennsylvania to serve downstate New York loads. The constraints thus identified are listed in Table VIII–12, and their approximate locations are shown in Figures VIII–8A and VIII–8B.

Table VIII-12. Transmission Constraints Limiting the Ability To Use Generation in Upstate NYISO and Ontario to Serve NYISO Loads

ISO	Constraint Number	Flowgate Name	Constraint Type	Class	Congestion	Symbol in Map
NYISO	1	111/F UPNY - SENY OPEN LO	Interface	Source & Sink	Top Constraint	——
NYISO	2	14 I/F WEST CENTRAL OP HI	Interface	Source & Sink	Top Constraint	——
NYISO / IMO	3	1454 - IMO-NYIS	Interface	Source & Sink		——
NYISO	4	1TRIP Dun-ShoreRd SpBrk-EGC	Line	Source & Sink	Top Constraint	—
NYISO	5	1TRIP Leeds-Pleasant Val HI	Line	Source & Sink	Top Constraint	—
NYISO	6	1-TRIPSSCRIBA -VOLNEY - 1	Line	Source & Sink		—
NYISO	7	1TSPBKTRMT:DUN SOI R-E179 ST	Line	Source & Sink		—
NYISO	8	7 I/F CENTRAL EAST LO	Interface	Source & Sink	Top Constraint	——
NYISO	9	7 I/F MOSES SOUTH OPEN HI	Interface	Source & Sink	Top Constraint	——
NYISO	10	8 I/F DYSINGER-EAST OPEN LO	Interface	Source & Sink		——
NYISO	11	Actual:E179 ST-HG 6	Line	Source & Sink	Top Constraint	—
NYISO	12	Actual:HUDAVE E-JAMAICA	Line	Source & Sink	Top Constraint	—
NYISO	13	Actual:L SUCSPH-JAMAICA	Line	Source & Sink		—
NYISO	14	Actual:RAINEY8W-VERNON-W	Line	Source & Sink		—
NYISO	15	Actual:SPRBROOK-TREMONT	Line	Source & Sink		—
NYISO	16	Actual:V STRM P-JAMAICA	Line	Source & Sink	Top Constraint	—
NYISO	17	CP1O_12_1-tips, ReacBus-Dvnp	Line	Source & Sink	Top Constraint	—
NYISO	18	CP1O_20_E1 79St.Hg4_E179StHg	Line	Source & Sink	Top Constraint	—
NYISO / IMO	19	NFG7O1O - IMO- ADIRONDACK	Line	Source & Sink	Top Constraint	—
NYISO / IMO	20	NFG71O5 - ADIRONDACK - IMO	Line	Source & Sink	Top Constraint	—
NYISO	21	NORHR138 138-NRTHPT P 138- 1	Line	Source & Sink		—
NYISO	22	BARRET VALLEY STREAM ACTUAL	Line	Sink		—
NYISO	23	1-TRIPS,HMP HRBR-DVNPT NK- 1	Line	Sink	Top Constraint	—
NYISO	24	1-TRIPS,SHORE RD-L SUCS -1	Line	Sink		—
NYISO	25	Actual:DUN SO1R-E179 ST	Line	Sink	Top Constraint	—
NYISO	26	VALLEY STRM - E GARDEN CTY	Line	Sink		—
NYISO / ISONE	27	NFG9155 - NYIS-ISONE	Interface	Sink		——
NYISO	28	1TGOWNGOTN:GOWANUSS-GOTHLS S	Line	Sink		—
NYISO	29	1TGOWSGOTS:GOWANUSN-GOTHLS N	Line	Sink		—
NYISO	30	1-TRIPS,E15ST 46-FARRAGUT- 1	Line	Sink		—
NYISO	31	16 I/F TOTAL EAST LO	Interface	Sink		——
NYISO	32	1-TRIPS,E VIEW1 -EASTVIEW- 1	Transformer	Source & Sink		⅄
NYISO / PJM	33	FARRGUT 1000MW WHEEL	Wheeling	Source & Sink	Top Constraint	⋊
NYISO / PJM	34	RAMAPO 1000MW WHEEL	Wheeling	Source & Sink		⋊

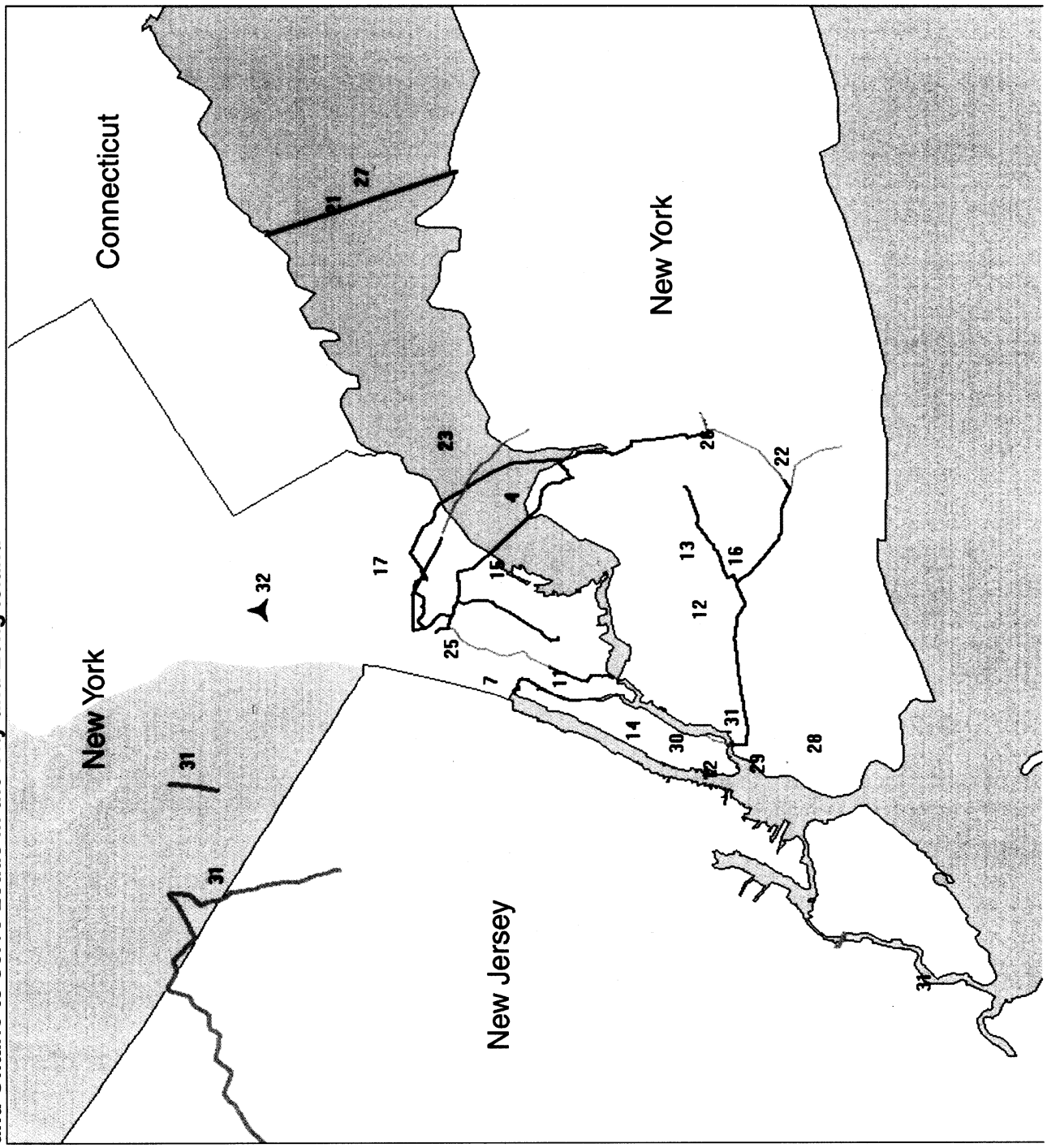
Sources: NYISO data; DOE Congestion Study Projections for 2008.

Figure VIII-8A. Transmission Constraints Limiting the Ability to Use Generation in Upstate New York and Ontario to Serve Downstate New York Loads



Source: DOE Congestion Study, 2008 base case projections.

Figure VIII-8B. Transmission Constraints in New York City Area Limiting the Ability to Use Generation in Upstate New York and Ontario to Serve Loads in the City and Long Island



Source: DOE Congestion Study, 2008 base case projections.

Further, PJM notes in its comments that total congestion costs in its growing footprint rose from $65 million in 1999 to more than $2.09 billion in 2005.[61] (See Table VIII–13.) These figures are similar to the results from the Department's modeling for 2008, which show that the top constraints in this region account for $1.57 billion (20 percent) of the $8 billion of total congestion rent for the entire Eastern Interconnection. The Department's projections for 2008 show that the top constraints in New York account for $0.98 billion (12 percent) of the $8 billion of total congestion rent for the entire Eastern Interconnection. As discussed in Section VII.A.2 above, while financial transmission rights protect load-serving entities in PJM and NYISO from paying congestion costs or congestion rents, congestion costs and congestion rents are nonetheless useful indicators of the persistence and pervasiveness of congestion within a transmission system.

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Table VIII-13. Total Annual PJM Congestion Costs, 1999-2005 (Million Dollars)

	Congestion Charges	Percent Increase Over Previous Year	Total PJM Billing	Percent of PJM Billing
1999	$65	NA	NA	NA
2000	132	103	$2,300	6
2001	271	106	3,400	8
2002	453	67	4,700	10
2003	464	2	6,900	7
2004	750	62	8,700	9
2005	2,092	179	22,630	9
Total	**$4,163**		**$48,630**	**9**

Source: PJM State of the Market Report, 2005.

Thus, the Department has documented the existence of persistent congestion into and within the Mid-Atlantic Critical Congestion Area, as well as the constraints causing that persistent congestion. As discussed in Section II.A above, whenever there is persistent congestion, buyers must rely on power from less-preferred generating sources, a smaller range of generators is able to serve load, and grid operators have fewer options for dealing with adverse circumstances or unanticipated events, all of which adversely affects consumers. Therefore, the Department finds under FPA section 216(a)(2) that there are ''constraints or congestion that adversely affects consumers'' in the Mid-Atlantic Critical Congestion Area.

C. Determination That Designation of a Mid-Atlantic Area National Corridor Would Be Warranted

Given the presence of constraints or congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area, the Secretary has the discretion to consider designation of a National Corridor. As discussed above in Section II.A, the Secretary will determine whether to exercise his discretion based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate. In this section, the Department discusses the considerations that it believes warrant designation of the Mid-Atlantic Area National Corridor.

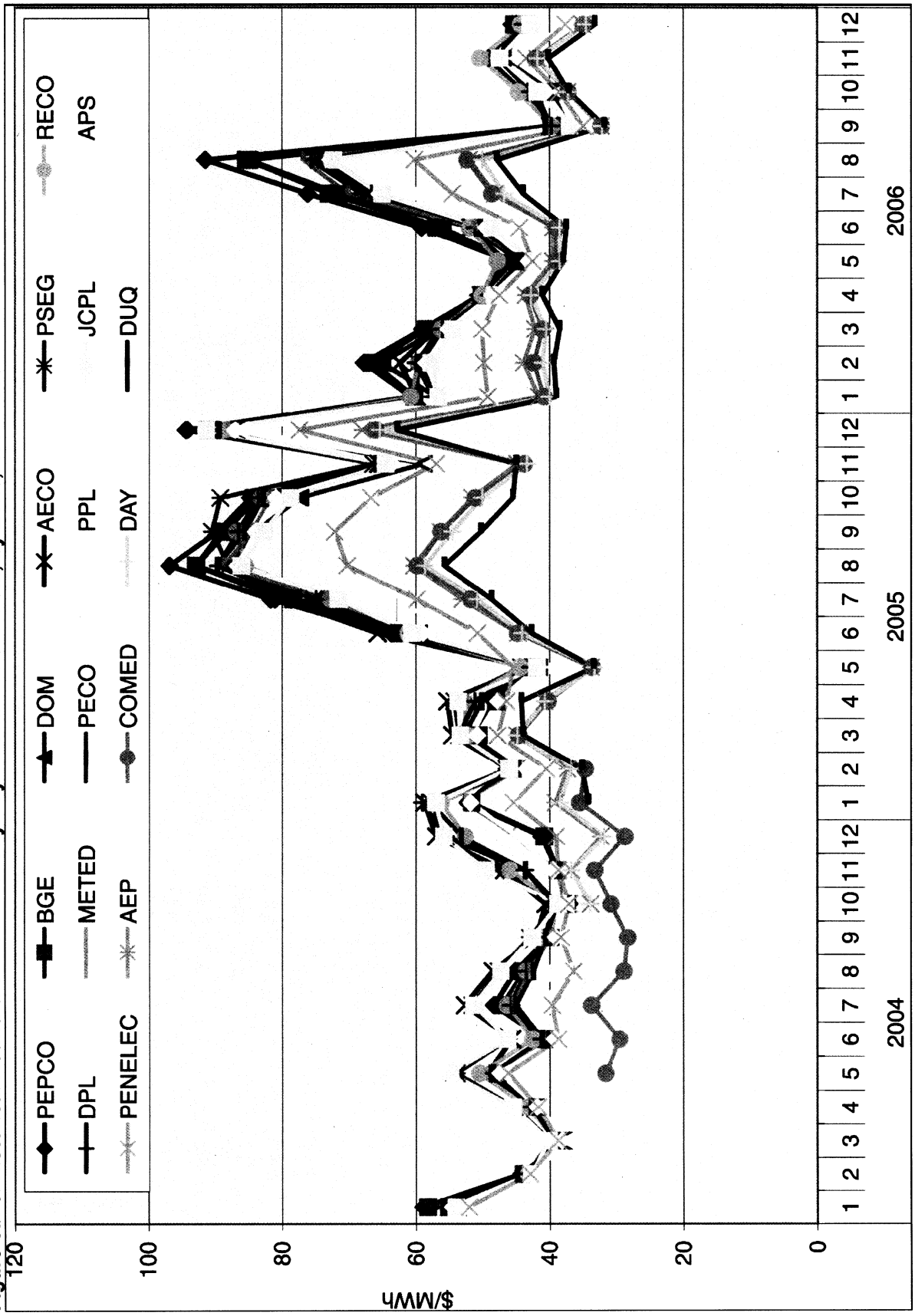
1. Economic Development Considerations

Data from January 2004 through December 2006 confirm that despite the fact that PJM has been operating as a single market, transmission constraints result in major and persistent disparities in wholesale electricity prices within the market. (See Figure VIII–9.) As a result of these fundamental price disparities, electricity consumers in the eastern portion of PJM's footprint consistently end up paying higher electricity bills than consumers in the western portion.[62]

[61] Whenever a constraint is binding in real time, PJM assesses a transactional congestion charge to those customers whose power is transmitted over the constraint. The charge is the difference in LMP on either side of the constraint multiplied times the amount of power transmitted.

[62] In this analysis, the eastern portion of PJM's footprint includes the service areas of Pepco, Baltimore Gas & Electric Company, Dominion, Atlantic City Electric, PSEG, Rockland Electric Co., Delmarva Power, Jersey Central Power & Light, Met-Ed, PECO, and PPL Electric Utilities. The western portion of PJM's footprint includes the service areas of AEP, Commonwealth Edison (ComEd), The Dayton Power & Light Company (DP&L), and Duquesne Light Company (Duquesne).

Figure VIII-9. Historical Round-the-Clock Monthly Day-Ahead LMPs in PJM, by Zone, 2004-2006



Note: The incomplete price data shown in 2004 and 2005 are the result of new members joining the PJM market: Commonwealth Edison joined in May 2004, American Electric Power and Dayton Power and Light joined in October 2004, Duquesne joined in January 2005, and Dominion joined in May 2005.
Data source: PJM.

As shown in Figure VIII–10[63], the price disparity in monthly average day-ahead LMPs between the Pepco and Duquesne zones was as much as $45/MWh from August 2005 through October 2005 and again in August 2006. More generally, consistently higher prices were experienced in the zones of eastern PJM that serve Washington, DC, Baltimore,[64] Philadelphia, and northern New Jersey. Further, the basic price disparity between the eastern and western parts of PJM's footprint occurred regardless of the time of day. A similar pattern was observed when the data were divided into on-peak and off-peak periods, and when data from PJM's real-time market for the same period were examined.[65] As one might expect, the price disparity widened considerably when the electricity supply system was working close to its physical limits, as on hot summer days. Figure VIII–11 shows hourly day-ahead LMPs for August 8, 2005, when the differential reached its maximum ($270/MWh) for that calendar year.

[63] Note that the incomplete price data shown in Figure VIII–10 in 2004 and 2005 are the result of new members joining the PJM market: ComEd joined in May 2004; AEP and DP&L joined in October 2004; Duquesne joined in January 2005; and Dominion joined in May 2005.

[64] According to a staff report published by the Maryland Public Service Commission (MPSC): Maryland offers a first-hand look at the pricing impacts of congestion. Frederick County is a key congestion point on the west-to-east transmission import path. Three years ago, locational marginal prices (LMPs) for electricity in Maryland west of that point averaged $2.90 per megawatt-hour (MWh) less than prices in Maryland east of that point. By 2006, that gap had risen to $9.43 per MWh. The gap is likely to continue to increase until additional generation becomes available to serve central and southern Maryland and the Eastern Shore, or additional transmission capacity becomes available to import electricity into those regions.

MPSC Staff Report, Electric Supply Adequacy Report of 2007, p. 3 (Jan. 2007) (MPSC Report). The report continues ''Maryland is directly affected by transmission congestion, particularly since it and neighboring states (including the District of Columbia) have to import a large proportion of their energy needs. * * * LMPs in Maryland are among the very highest in PJM.'' *Id.,* p. 11.

[65] *See* Appendix A for additional detail. Appendix A is available at *http://nietc.anl.gov.*

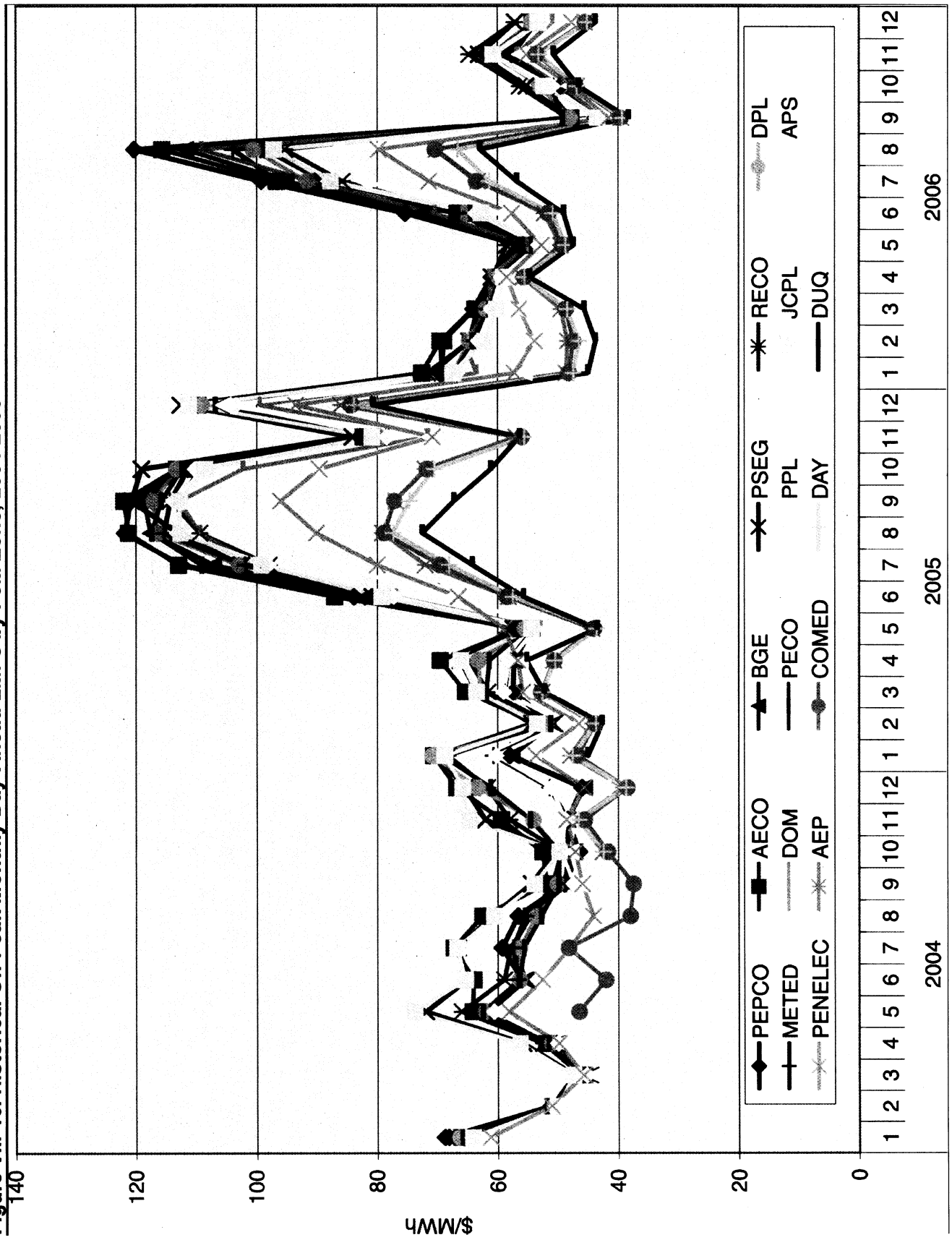
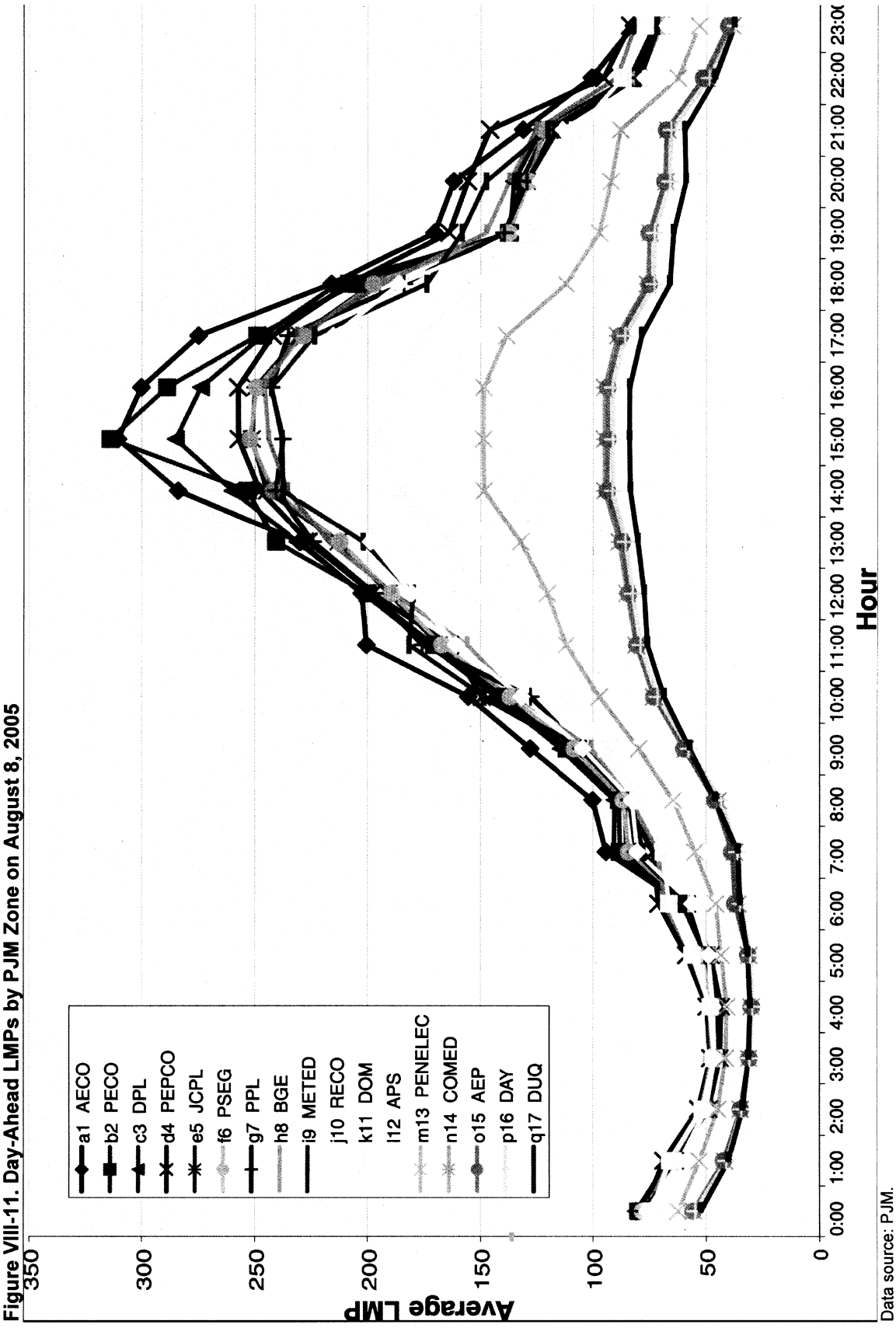


Figure VIII-10. Historical On-Peak Monthly Day-Ahead LMPs by PJM Zone, 2004-2006

Data source: PJM.



For the area served by NYISO, historical electricity price data from 2004 through 2006 show a persistent pattern of substantially lower wholesale electricity prices in the day-ahead market for the western and upstate

zones than in New York City and Long Island. (See Figure VIII–12.) As a result of this persistent disparity, electricity consumers in the area north of New York City, the City itself, and on Long Island end up paying higher electricity bills than consumers in the rest of the State of New York.

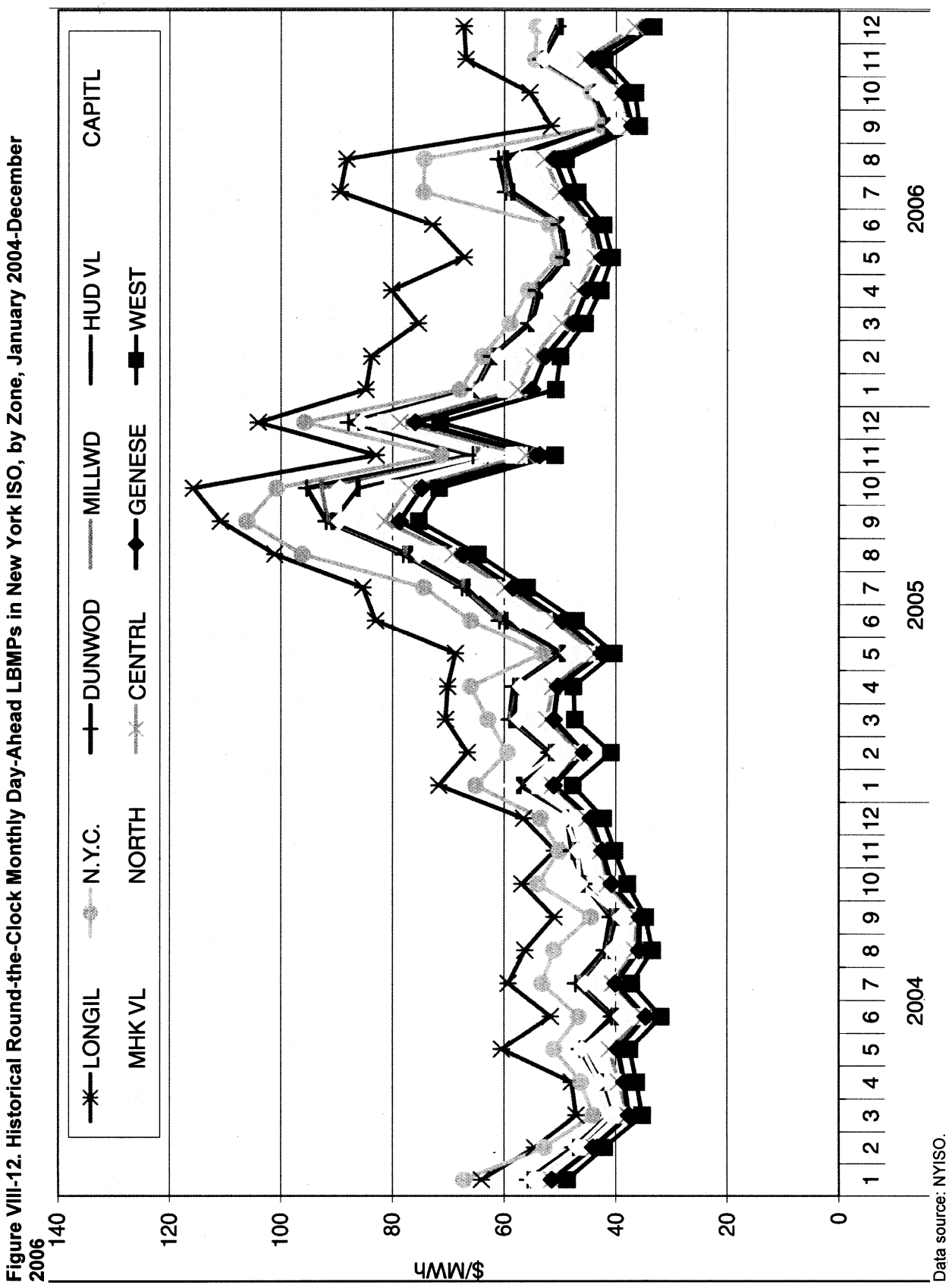
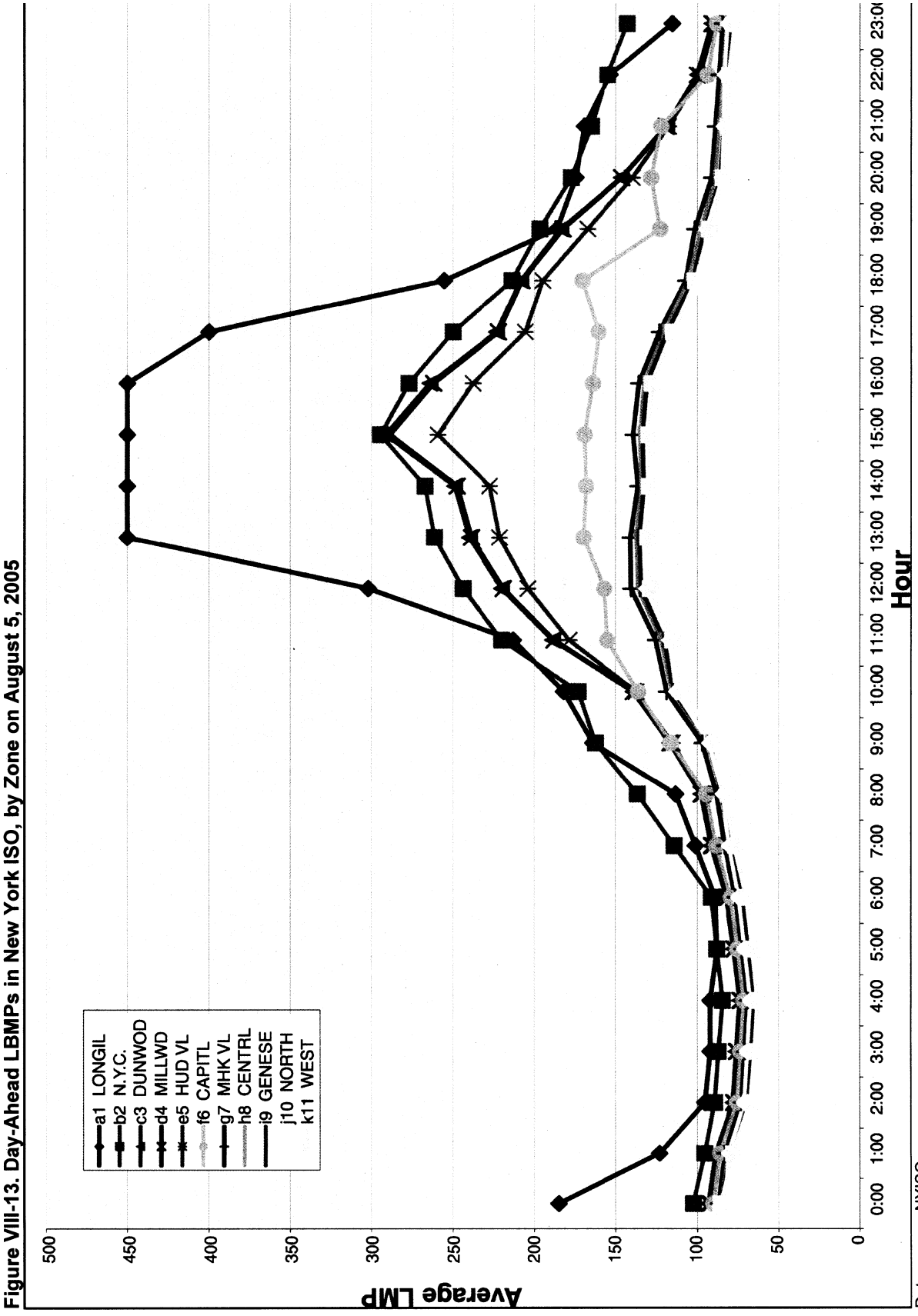


Figure VIII-12. Historical Round-the-Clock Monthly Day-Ahead LBMPs in New York ISO, by Zone, January 2004-December 2006

As shown in Figure VIII–12, the difference in monthly average wholesale day-ahead prices between the highest and lowest zones was as much as $44/MWh. A similar pattern is seen if one looks only at the day-ahead on-peak

hours and only at the day-ahead off-peak hours, sometimes with a re-ordering of the zones with intermediate prices. Similar price patterns are also seen in the real-time data.[66] As one might expect, the price disparity widened considerably when the electricity supply system was working close to its physical limits, as on hot summer days. Figure VIII–13 shows hourly day-ahead LBMPs for August 5, 2005, when the differential reached its maximum ($325/MWh) for that calendar year.

[66] *See id.*



In addition, the constraints in New York result in consumers in downstate New York paying disproportionate generation capacity costs. If local load-serving entities were to contract for their electricity supply needs across New

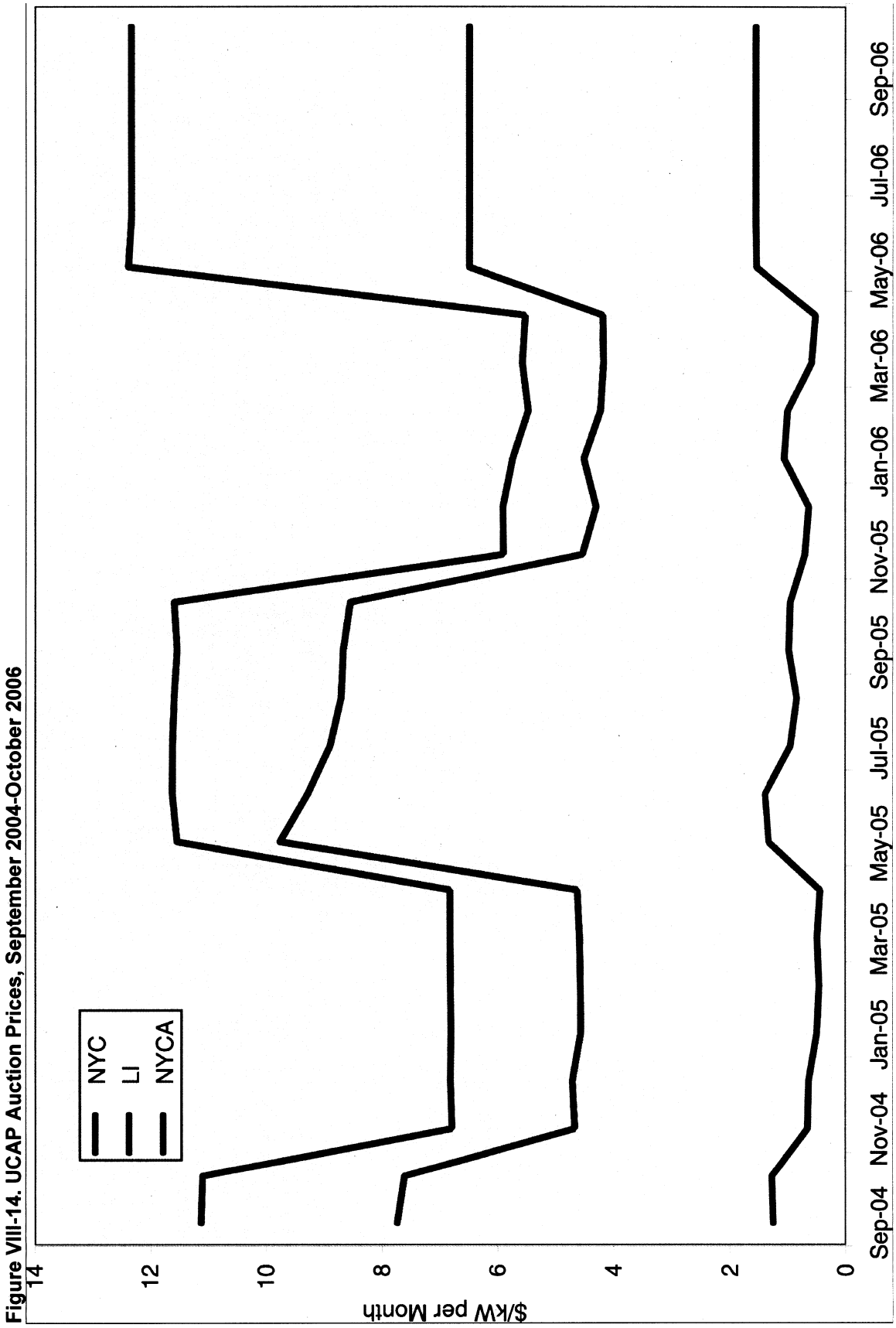
York without regard to the location of the generation capacity, reliability could be imperiled because there would be no assurance that all of the electricity required could actually be delivered to the load centers when needed. To avoid such situations, the New York State Reliability Council has established locational ICAP requirements, according to which generation capacity must be located within New York City sufficient to meet 80 percent of the City's forecast annual peak load. Similarly, 99 percent of Long Island's forecast annual peak load must be located on the Island. Load-serving entities are free to buy their electricity supplies from distant sources when those sources are accessible, but the load-serving entities must also ensure that they have adequate local capacity available at all times. The locational ICAP system enables reliability requirements to be met, but at additional cost to consumers.

To ensure that the locational ICAP requirements are met, NYISO operates an ICAP market. The ICAP market involves the sale of generation capacity, unlike NYISO's day-ahead and real-time markets, which involve the sale of energy. Load-serving entities that have not met their full ICAP requirements through contracts with local generators must participate in NYISO's ICAP market. The ICAP market consists of periodic auctions for three areas: New York City, Long Island, and the New York Control Area (which is all of NYISO).

The amount of capacity that a generator is qualified to provide through the ICAP market is determined by an Unforced Capacity (UCAP) methodology, which accounts for the possibility of forced outages, thus the prices set in the ICAP market are referred to as UCAP prices. As shown in Figure VIII–14, UCAP prices for New York City and Long Island were consistently higher than UCAP prices for the entire New York Control Area over the 26-month period from September 2004 to October 2006, sometimes dramatically so. The substantial differentials between the State-wide UCAP prices and UCAP prices in New York City and Long Island represent a premium the load-serving entities in the City and on Long Island (and their retail customers) must pay to ensure reliability by maintaining local generation capacity instead of improving the transmission system sufficiently to be able to rely more extensively on distant generation sources. This premium is in addition to the higher costs the load-serving entities and their customers pay for electric energy because they are relying to a greater extent on generation sources with higher production costs.[67]

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[67] DOE does not mean to imply that large load centers, such as New York City, Long Island, or the major cities in the eastern portion of PJM's footprint could rely entirely on distant generation if sufficient transmission capacity were available. DOE recognizes that some level of local generation is needed to maintain voltage support and stability.



The data detailed above indicate that consumers in the Mid-Atlantic Critical Congestion Area now pay high electricity prices because their electricity suppliers are unable to access low-cost supplies due to insufficient

transmission capacity. Reasonably priced electricity supplies are vital to the economic and social well-being of any metropolitan area. High electricity prices add to the cost of living or doing business in the area, and retard the area's economic growth and competitiveness. Further, one of the considerations identified in FPA section 216(a)(4) is whether ''the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or *reasonably priced electricity.*'' FPA section 216(a)(4)(A); 16 U.S.C. 824p(a)(4)(A) (emphasis added).

Therefore, the Department believes that economic development considerations warrant designation of a National Corridor for the Mid-Atlantic Critical Congestion Area.

2. Reliability Considerations

The constraints limiting delivery of electricity to the eastern portion of PJM's footprint pose a threat to reliability given the steady growth in electricity demand in that area, the area's aging generation fleet with recent retirements of significant amounts of capacity, the slow pace of development of new local generation capacity in that area, and the uncertainties associated with increasing demand response.

Weather-normalized summer peak load for the PJM footprint as a whole is projected to grow at an average rate of 1.6 percent per year for the period 2006 through 2016. However, projected annual growth varies widely among the utilities in PJM's footprint, ranging from 0.7 percent to 2.4 percent, and much of the most rapid growth is concentrated in the eastern portion, and particularly in the Baltimore-Washington-Northern Virginia area.[68]

Between 2003 and 2006, a total of 582 MW of generating capacity in the Baltimore-Washington-northern Virginia area was retired or put on a restricted-use status for environmental reasons.[69] About 200 MW has been added in the area since 2000, and about 20 MW is now under construction. An additional 5600 MW is now proposed for the area, but only 14 MW of it would go into service before 2009, and about 5000 MW is associated with three new nuclear units that would not become available before 2015 or 2016.[70] PJM estimates that 2500 MW of net new generation would need to be installed east of its Loudon substation in northern Virginia to avoid the need for additional transmission in the western portion of its footprint.[71]

Further, while efforts are being made to increase the participation of demand-side resources in the PJM wholesale electricity markets, it does not appear that such efforts are capable of producing near-term results on the scale needed to forestall the need for additional transmission.[72]

Thus, PJM asserts:

> additional transmission capability is essential in [the western portion of PJM's footprint] to maintain reliable and economic service to the Baltimore-Washington-Northern Virginia urban load center. Unless a major new, high-voltage transmission circuit is constructed * * * by 2011, existing 500 kV transmission facilities serving this critical load center will become overloaded, in violation of NERC and PJM reliability and planning criteria * * * Additional transmission capability [in the eastern portion of PJM's footprint] will be needed, in this instance by 2014, to avoid numerous projected violations of NERC and PJM reliability and planning criteria in northern New Jersey.[73]

With regard to New York, since its submission of comments on the Congestion Study, NYISO has published a new Reliability Needs Assessment (2007 RNA) as part of its Comprehensive Reliability Planning Process.[74] The 2007 RNA indicates that the constraints limiting delivery of electricity to southeast New York pose a threat to reliability by 2011, given the growth in electricity demand and the projected retirement of generating units.

NYISO notes that load in southeast New York has been growing by over two percent per year.[75] NYISO estimates that between 2007 and 2009, 1,674.8 MW of generating capacity in New York will be retired, and only 1,203.9 MW of capacity will be added.[76] NYISO describes the effects of these factors on the already constrained transmission system as follows:

> By 2011, the NYCA load forecast estimates that approximately two thirds of the NYCA load will be located in load Zones G through K which is downstream of the UPNY–SENY [Upstate New York-Southeast New York] transmission interface. In addition, approximately 52% of the NYCA load will be located in load Zones J and K, downstream of the Dunwoodie-South transmission interface, which is a slight increase from current load levels.
>
> The demands that are increasingly being placed on the transmission system in conjunction with other system changes, consisting primarily of generating units retirements * * *, load growth, neighboring system changes and the lack of new capacity or transmission resources downstream of the UPNY–SENY interface, have and will continue to result in voltage criteria violations at much lower transfer levels than have previously occurred. The result is that over time, transfers into and through SENY will increasingly be limited by voltage constraints rather than thermal constraints. This reduced capability of the bulk power system to make power transfers into SENY due to these voltage constraints, coupled with continuing load growth in SENY results in a resource adequacy criterion violation by 2011.[77]

The data detailed above indicate that consumers in the Mid-Atlantic Critical Congestion Area face threats to reliability if existing congestion problems are not addressed. Reliable electricity supplies are vital to the economic and social well-being of any metropolitan area. Electricity supply disruptions may come in many forms, ranging from brief disturbances in power quality and localized outages to large-scale, cascading blackouts. The exact cost of electric supply disruptions is difficult to quantify and varies depending upon the specific circumstances. However, such disruptions can impose enormous costs on consumers and may also, under

[68] Comments of PJM, p. 28.

[69] *Id.,* p. 30. In Maryland, recently enacted environmental legislation will cause: Owners of at least two Maryland coal-fired power plants to consider whether it is possible, or worthwhile, to install the necessary [control] equipment. Any existing Maryland coal plants that may have to be retired will exacerbate the existing reliability challenges and increase the possibility of supplies during peak periods not being able to meet the demand for electricity. The consequences could include periods of voltage reductions and/or rolling outages during peak periods to keep the system from collapsing.

MPSC Report, p. 23.

[70] Comments of PJM, p. 32.

[71] *Id.,* p. 38.

[72] PJM says that:

> [F]or purposes of long-term planning for total system adequacy, substituting [demand response] for incremental transmission capability would require, at best, several times the equivalent amount of new generation that would be needed to offset the new transmission capacity. [Demand response] does not produce a steady stream of MW equivalent output because it is normally cycled over a given time period (i.e., load would be switched off and on to ensure minimal impact to the [demand response] provider, rather than switched off for the entire duration of the system need). Also, [demand response] is produced in a variety of diverse programs, which also result in divergent measurements. Within PJM, [demand response] participants may be price responsive, contractually obligated, or directly controlled. Each category of [demand response] results in a variation of the expected amount, or ''output,'' of [demand response] that is provided when called upon, thereby further complicating the difficulty of determining, for long-term planning purposes, the transmission or generation MW that are equivalent to a stated amount of [demand response].

Id., pp. 38–40.

[73] *Id.,* pp. 5–6.

[74] *See* NYISO, Comprehensive Reliability Planning Process 2007 Reliability Needs Assessment (March 16, 2007).

[75] *Id.,* p. 10.

[76] *Id.,* p. 7.

[77] *Id.,* p. 10.

certain circumstances, pose dangers to public health and safety.

For example, estimates of the total cost of the eastern blackout of August 14, 2003 range between $4 billion and $10 billion (U.S. $) for the United States; in Canada, the same event led to a reduction in gross domestic product of 0.7 percent in August, a net loss of 18.9 million work hours, and manufacturing shipments in Ontario were down $2.3 billion (Canadian $).[78]

Further, one of the considerations identified in FPA section 216(a)(4) is whether ''the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by *lack of adequate* or reasonably priced electricity.'' FPA section 216(a)(4)(A); 16 U.S.C. 824p(a)(4)(A) (emphasis added).

Therefore, the Department believes that reliability considerations warrant designation of a National Corridor for the Mid-Atlantic Critical Congestion Area.

3. Supply Diversity and Energy Independence Considerations

Much of the existing generation fleet in the eastern portion of PJM's footprint is fueled by oil or natural gas. For example, about 28 percent of the installed generation capacity in Maryland and the District of Columbia is either solely oil-fired or capable of using both oil and natural gas as fuels, as is 35 percent of the installed capacity in Delaware. Further, more than 75 percent of the generation capacity that has been added in recent years in Delmarva, Maryland, the District of Columbia, and New Jersey has been fueled by natural gas.[79] By contrast, the overall generation mix in PJM's footprint is 41 percent coal and 9 percent oil; coal provides more than 56 percent of total output from PJM units. Further,

> More than 6000 MW of additional coal-fired generation, some utilizing clean-coal technology, is currently under construction or active in PJM's interconnection queue. All of this capacity is or will be located far from the Baltimore-Washington-Northern Virginia load centers. Moreover, approximately 12,000–15,000 MW of additional wind-powered generation is either under construction or under active study in PJM's interconnection queue. With the exception of one plant under construction on the New Jersey coast, all of these facilities are or will be located west of the [eastern] load centers.[80]

Accordingly, one of the consequences of transmission congestion in the eastern portion of PJM's footprint is that it prolongs and exacerbates the area's existing use of oil and natural gas as generation fuels.

Most of the existing generation fleet in the downstate portion of New York is fueled by oil or natural gas. On a State-wide basis, about 39 percent of the electricity used in New York in 2005 came from oil or gas units, and 32 percent came from coal or hydroelectric capacity.[81] The absence of transmission facilities that would enable more hydro-, wind-, or coal-based electricity to reach the downstate load centers prolongs the area's current relatively high dependence on oil and natural gas as fuel sources.

Oil and natural gas are relatively high in price and must be purchased in markets that are highly volatile and subject to unanticipated international trends and adverse events. Inadequate transmission capacity leaves consumers in the Mid-Atlantic Critical Congestion Area exposed, perhaps increasingly, to the higher prices and higher price volatility associated with these generation fuels, with a resulting impact on business certainty, especially for industrial consumers. Lack of adequate transmission capacity also limits the Mid-Atlantic Critical Congestion Area's access to generation fueled by domestic sources that could displace generation fueled by foreign sources. Thus, economic growth may be jeopardized and energy independence is compromised. Further, one of the considerations identified in FPA section 216(a)(4) is whether ''(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted.'' FPA section 216(a)(4)(B); 16 U.S.C. 824p(a)(4)(B). Another consideration identified in that statute is whether ''the energy independence of the United States would be served by the designation.'' FPA section 216(a)(4)(C); 16 U.S.C. 824p(a)(4)(C).

Therefore, the Department believes that supply diversity and energy independence considerations warrant designation of a National Corridor for the Mid-Atlantic Critical Congestion Area.

4. National Defense and Homeland Security Considerations

The Mid-Atlantic Critical Congestion Area is home to 55 million people (19 percent of the Nation's 2005 population)[82] and is responsible for $2.3 trillion of gross state product (18 percent of the 2005 gross national product).[83] Given the large number of military and other facilities in the Mid-Atlantic Critical Congestion Area that are extremely important to the national defense and homeland security, as well as the vital importance of this populous area to the Nation as an economic center, any deterioration of the electric reliability or economic health of this area would constitute a serious risk to the well-being of the Nation. Further one of the considerations identified in FPA section 216(a)(4) is whether ''the designation would enhance national defense and homeland security.'' FPA section 216(a)(4)(E); 16 U.S.C. 824p(a)(4)(E).

Therefore, the Department believes that national defense and homeland security considerations warrant designation of a National Corridor for the Mid-Atlantic Critical Congestion Area.

D. Boundaries of the Draft Mid-Atlantic Area National Corridor

In this section, the Department first explains how it determined the general extent of the draft Mid-Atlantic Area National Corridor using a source-and-sink approach. Then the Department explains how it delineated specific boundaries for the draft Mid-Atlantic Area National Corridor.

1. General Extent of the Draft Mid-Atlantic Area National Corridor

In order to set the boundaries of the draft Mid-Atlantic Area National Corridor, DOE used the general source-and-sink approach described in Section III above. The sink areas are the locations of the consumers adversely affected by the persistent congestion documented in Section VIII.B above. Specifically, the sink areas are the areas downstream of the constraints identified in Section VIII.B above, from metropolitan New York City south along the Atlantic coast to northern Virginia.

[78] U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, p. 1 (April 2004).

[79] Comments of PJM, p. 51.

[80] *Id.,* pp. 52 and 78.

[81] NYISO presentation prepared for Sept. 11, 2006, meeting with DOE.

[82] U.S. Census Bureau, Population Estimates Program, *http://factfinder.census.gov/*

[83] *See* Bureau of Economic Analysis, National Economic Accounts, *http://www.bea.gov/bea/dn/home/gdp.htm.*

With regard to selecting source areas, as discussed in Section III above, the Department was guided by the considerations identified in FPA section 216(a)(4). In particular, the Department focused on the considerations of ensuring adequate supplies of reasonably priced power,[84] diversifying supply,[85] and furthering energy independence.[86] Applying those considerations, DOE selected as source areas locations of substantial amounts of existing, under-used economic generation capacity, as well as locations with the potential for substantial development of wind generation capacity. The existing under-used economic generation capacity could readily ensure adequate supplies of reasonably priced power if additional transmission capacity were made available. In addition, increased access to this under-used economic generation capacity, which is predominantly coal-fired, as well as to the wind generation capacity would help diversify supply and increase energy independence for the Mid-Atlantic Critical Congestion Area. Figure VIII–15 indicates the locations of the source areas in upstate New York, western New York, western Pennsylvania, western Maryland, West Virginia, Ohio, Indiana, and Kentucky.[87]

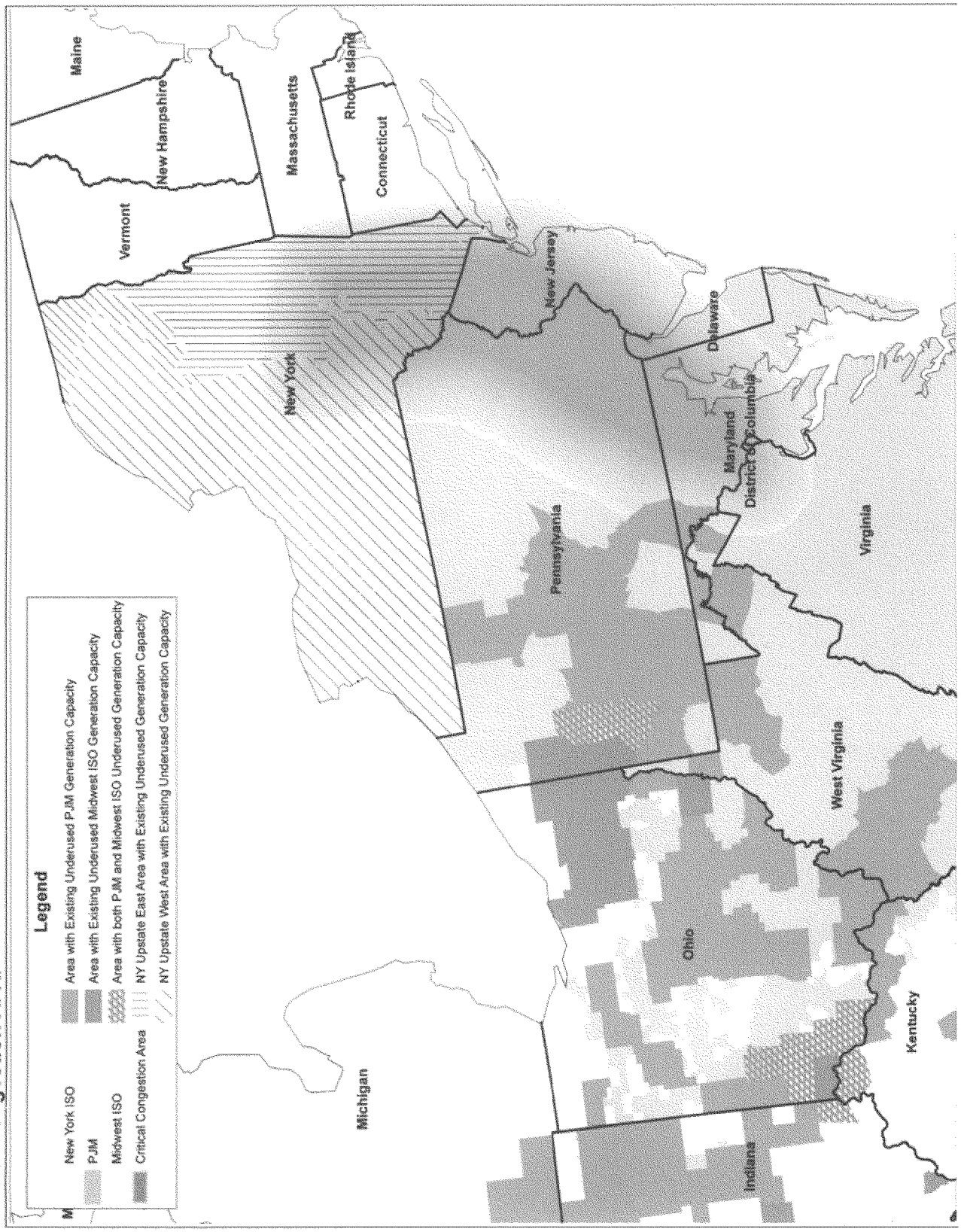
[84] *See* FPA sec. 216(a)(4)(A).

[85] *See* FPA sec. 216(a)(4)(B).

[86] *See* FPA sec. 216(a)(4)(C).

[87] The existing, under-used economic generation capacity used to establish the source areas was identified through the analysis summarized in Appendix A (available at *http://nietc.anl.gov*). The potential wind generation capacity used to establish the source areas was identified through State-level maps of potential wind resources. Those maps are provided in Appendix B, which is available at *http://nietc.anl.gov*.

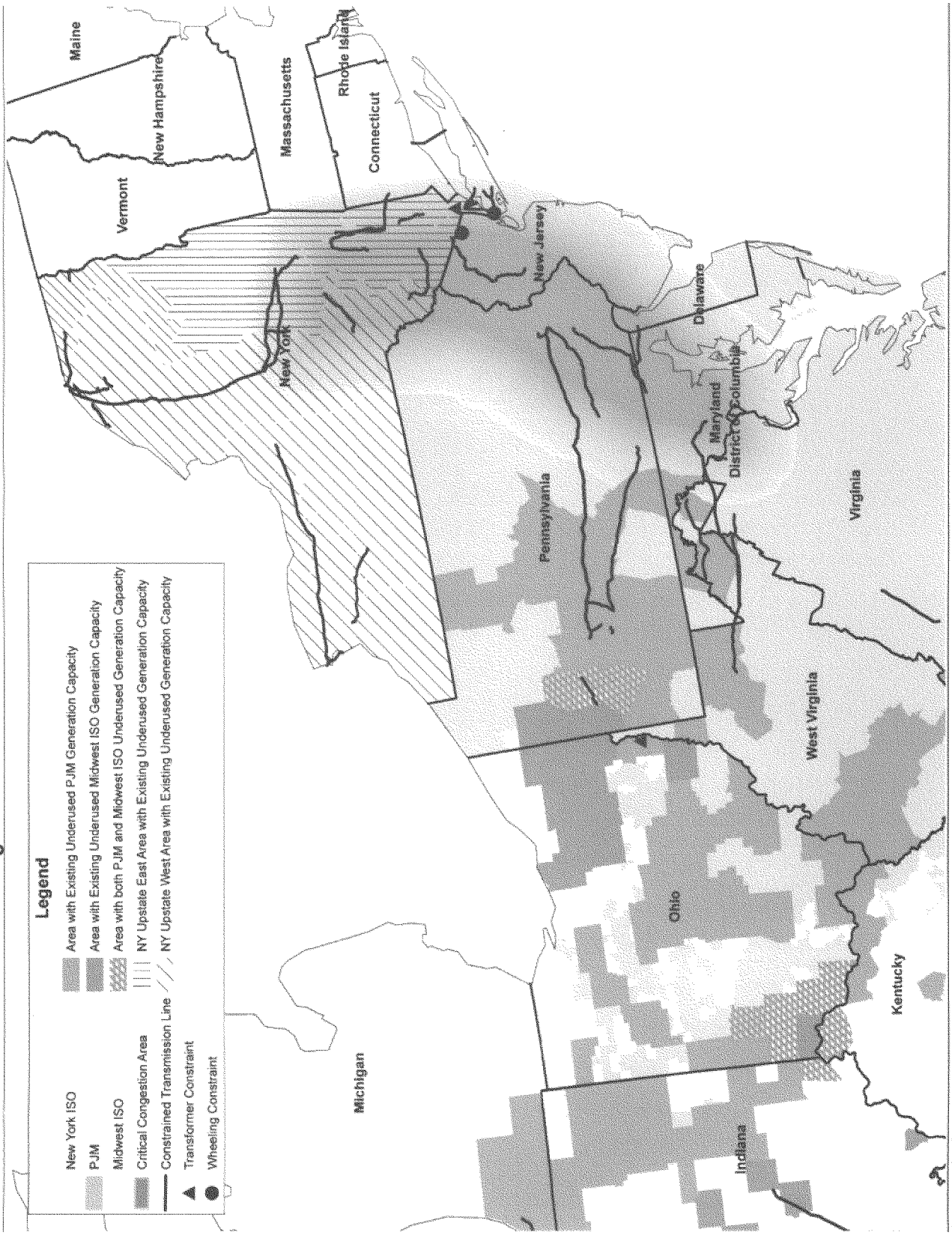
Figure VIII-15. Approximate Locations of Existing Non-Renewable Low-Cost Generation Sources in Relation to Mid-Atlantic Critical Congestion Area



Note: For the locations of potential renewable generation resources by state, see Appendix B.
Source: U.S. Department of Energy, 2007.

Having identified the source and sink areas, DOE next sought to determine which transmission constraints most limit the delivery of electricity from the source areas to the sink areas. The results of this inquiry are shown in Figure VIII–16.

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In the PJM footprint, the major obstacles to increased west-to-east flows are three groups of heavily loaded large high-voltage transmission lines. One group extends from northern West Virginia and western Maryland into

northern Virginia and central Maryland; a second group extends from western Pennsylvania into central Pennsylvania; and the third is a cluster of lines located mostly in eastern Pennsylvania but also extending into northeastern Maryland, northern Delaware, and northern New Jersey. The net effect of these constraints is to prevent the delivery of increased amounts of electricity in bulk from the source areas in the Midwest to the load centers in the Baltimore-Washington-Northern Virginia area, Philadelphia, Wilmington, the Delmarva peninsula, and the urban centers in central and northern New Jersey.[88]

Somewhat similarly, providers of electricity to consumers in the New York City area have limited access to the source areas in upstate New York and in the western part of the State, due to several clusters of transmission constraints within New York State.[89] Conceivably, New York City's needs might be satisfied to some degree through increased transmission access to PJM, but that could exacerbate the existing and projected congestion problems in the PJM footprint—unless it were done as part of some larger, well-coordinated plan between PJM and NYISO and their respective members. The constraints of particular interest in New York State are: a group between New York City and the existing substations at Marcy and Edic (near the city of Utica); a group to the south and east of the city of Massena; and a group in the western part of the State, between the cities of Buffalo and Syracuse.[90]

Thus, within PJM's footprint, the draft National Corridor encompasses the problematic existing west-to-east transmission lines; further, the draft National Corridor is broad enough, north-to-south, to encompass a range of potential projects and a range of potential routes to facilitate additional west-to-east flows. In addition, the draft National Corridor includes the sink areas as well, because it is frequently the case that the full potential benefits associated with a major new line will not be gained unless key improvements are made in the area to which the electricity is to be delivered. Somewhat similarly, the draft National Corridor extends far enough into the source areas to encompass a number of possible strong points on the transmission network that serves those areas.

In New York, the draft National Corridor extends northward from the area immediately north of New York City to the vicinity of Utica; then it divides into two legs, one to the Massena area and one to the Buffalo area. As with the section in the PJM footprint, this section of the draft National Corridor is broad enough to encompass a range of potential projects and a range of potential routes, and it includes the sink areas as well to encompass appropriate upgrades there. Further, as shown in Figure VIII–17, there are several important transmission constraints between New York City and Long Island. As a result, no solutions to New York City's congestion problems should be planned without considering Long Island, and thus the draft National Corridor includes Long Island.

[88] Figures VIII–15 and -16 present results of additional analysis, using outputs from the simulation of 2008 generation and power flows prepared for the Congestion Study. For additional detail, see Appendix A (available at *http://nietc.anl.gov*).

[89] These constraints also happen to limit access to additional generation capacity located outside New York State, in Quebec, Ontario, and Michigan.

[90] *See* Appendix A (available at *http://nietc.anl.gov*) for additional detail.

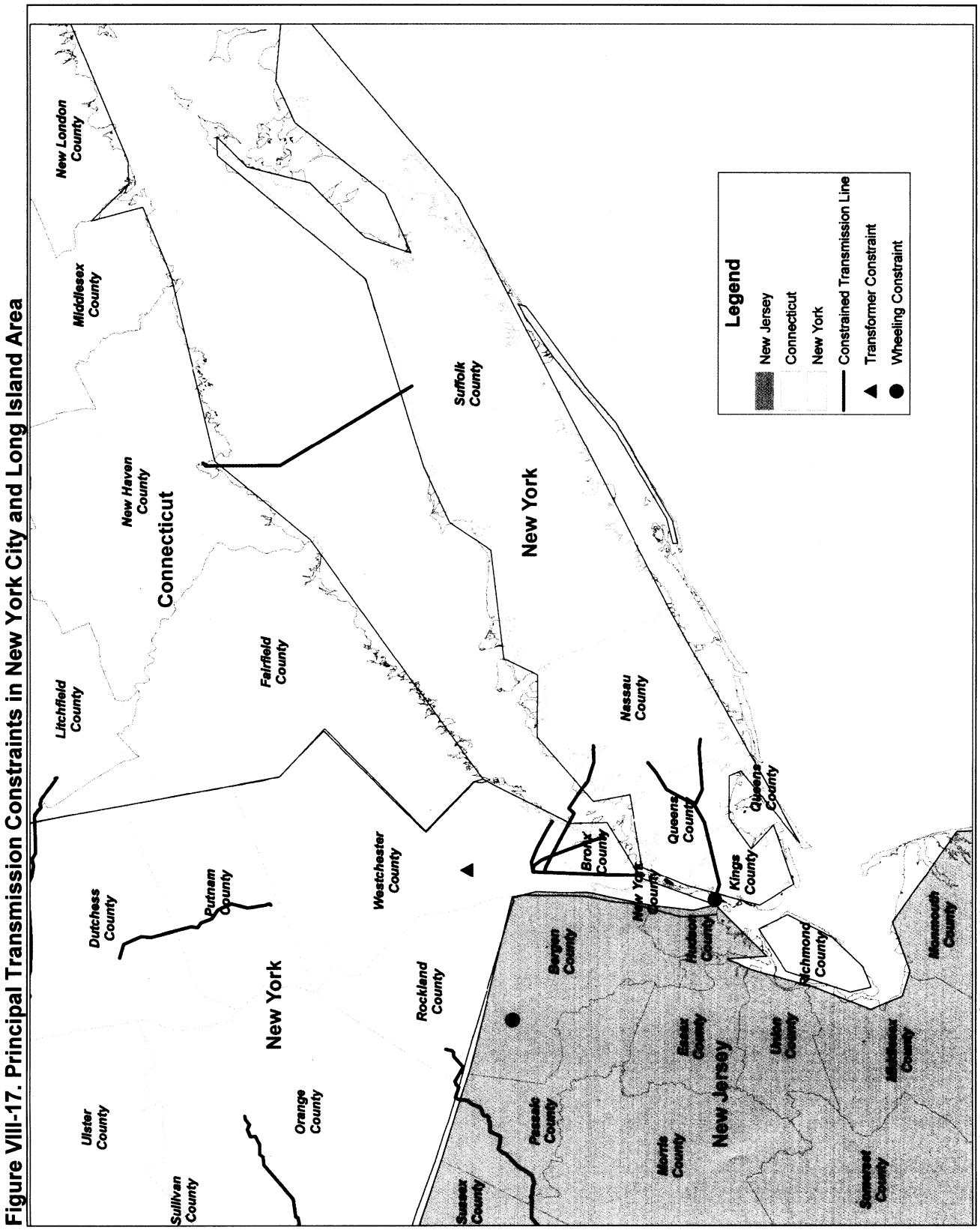


Figure VIII-17. Principal Transmission Constraints in New York City and Long Island Area

Source: U.S. Department of Energy, 2007.

Finally, although for ease of presentation the discussion thus far has focused on a draft National Corridor in the PJM footprint and a draft National Corridor in New York, the two areas are contiguous along a part of the shared border between the PJM and NYISO footprints. Accordingly, the draft National Corridor for the Mid-Atlantic Critical Congestion Area is a single Corridor—the draft Mid-Atlantic Area National Corridor—covering part of the

PJM footprint and part of New York, partly because some of the transmission planning that is needed should involve both PJM and NYISO, and also because transmission projects may be proposed that would cross their common boundary.

2. Specific Boundaries of the Draft Mid-Atlantic Area National Corridor

Having identified the sink and source areas on which to base the draft Mid-Atlantic Area National Corridor, as well as the constraints that must be encompassed in the National Corridor, DOE then delineated the specific boundaries of the draft Mid-Atlantic Area National Corridor. Again, for ease of presentation, the Department will discuss the draft Mid-Atlantic Area National Corridor in terms of a section within the PJM footprint and a section in New York; however, the Department notes that it is a single draft Mid-Atlantic Area National Corridor that is under consideration.

For the section within the PJM footprint, DOE first identified some general boundary points, and then linked certain of these points by means of straight lines to form a polygon. It would be impractical, however, to treat the polygon as this section of the draft Mid-Atlantic Area National Corridor, because that would not enable precise, easily identified boundaries in all areas. Accordingly, if the polygon includes some part of a county (or a city not included within a county), the Department has included all of that county or city in the draft National Corridor. This approach enlarges the draft Mid-Atlantic Area National Corridor but, in addition to establishing readily identifiable boundaries, helps ensure that the draft National Corridor encompasses a range of potential projects and a range of potential routes, as discussed in Section III above.

The western margin of the section of the polygon within the PJM footprint, in functional terms, is the eastern edge of the existing 765 kV transmission network in the Midwest, beginning with the South Canton substation, located near Canton, Ohio, continuing on to other substations to the south located on one side or the other of the Ohio River (which forms the boundary between Ohio and West Virginia), and ending with the John Amos substation near Charleston, West Virginia. Tapping into this network with new west-to-east transmission lines would enable access to generation capacity throughout the source areas.

The eastern margin of the section of the polygon within the PJM footprint is a straight line from the Calvert Cliffs substation in southern Maryland due east to the Atlantic shoreline, and then generally northward following the Atlantic shoreline and then up the Hudson River to the northeastern corner of New Jersey. The area around the Calvert Cliffs substation is of interest because if additional nuclear generating capacity is developed at the Calvert Cliffs nuclear plant or at nearby Virginia plants, additional transmission capacity would be needed to enable the electricity output to be moved from the Calvert Cliffs substation (or other relevant substations within the polygon) to the load centers in the sink area. If the nuclear capacity is not developed, the sink area could still benefit from development of additional west-to-east transmission capacity across the PJM footprint.

The Department has extended the draft National Corridor to the actual shoreline not because major new transmission lines are likely to be sited in such areas, but rather because these areas are sink areas, and transmission upgrades in some locations within these areas may be needed to gain the full benefit of improving their access to the source areas.

The southern margin of the section of the polygon within the PJM footprint is a straight line between the John Amos substation and the Calvert Cliffs substation.

The northern margin of the section of the polygon within the PJM footprint is: a straight line between the South Canton substation and the Susquehanna substation (which is the northernmost 500 kV substation in eastern PJM); a straight line from the Susquehanna substation due north to the Pennsylvania-New York border; the Pennsylvania-New York border east and southeast to the border between Pennsylvania and New Jersey; and then the border between New York and New Jersey southeast to the northeast corner of New Jersey.

Connecting the points described above produces the polygon shown in Figure VIII–18. Defining the draft National Corridor boundaries as including all of the partially enclosed cities or counties, as shown in Figure VIII–19, establishes the portion of the draft Mid-Atlantic Area National Corridor within the PJM footprint.

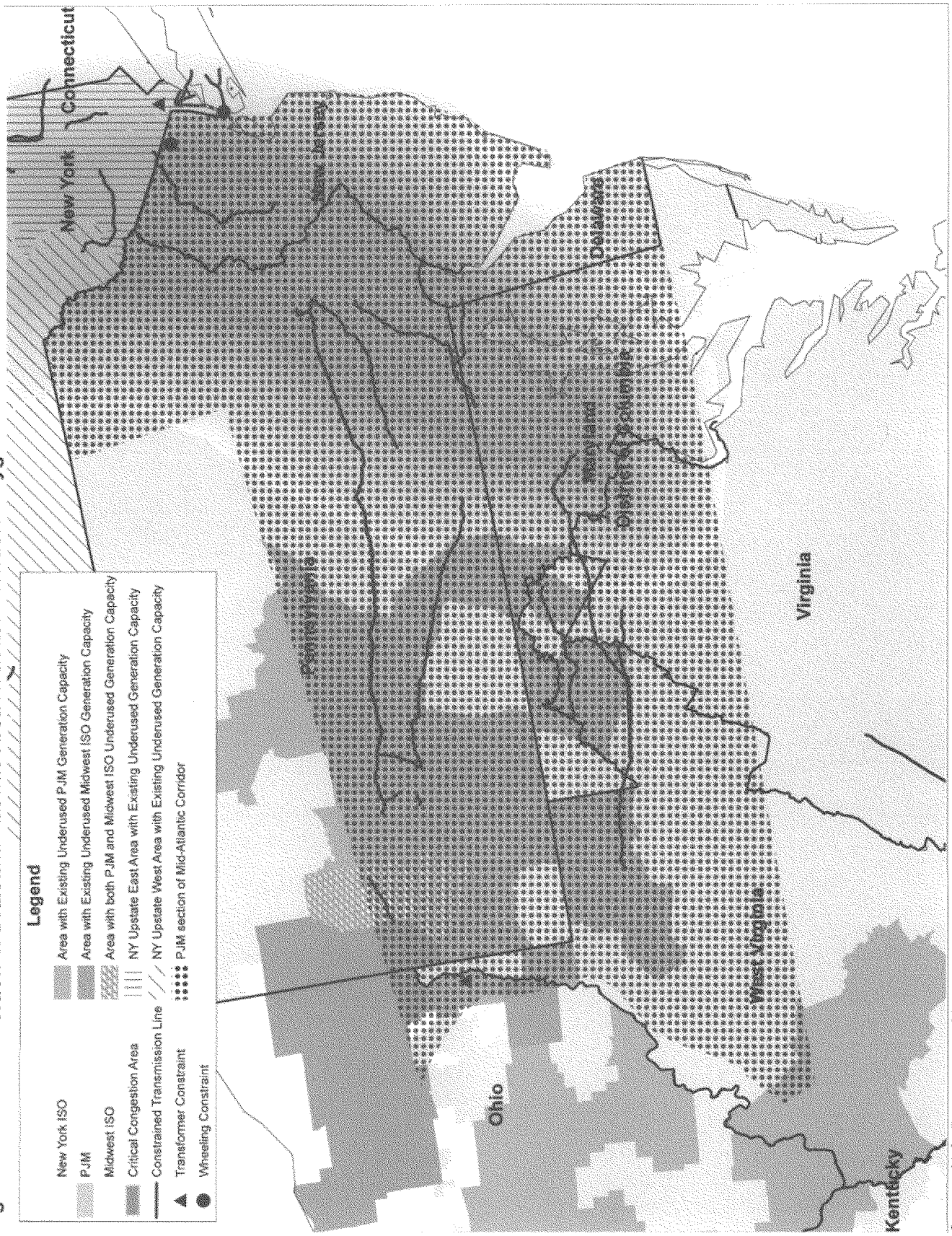
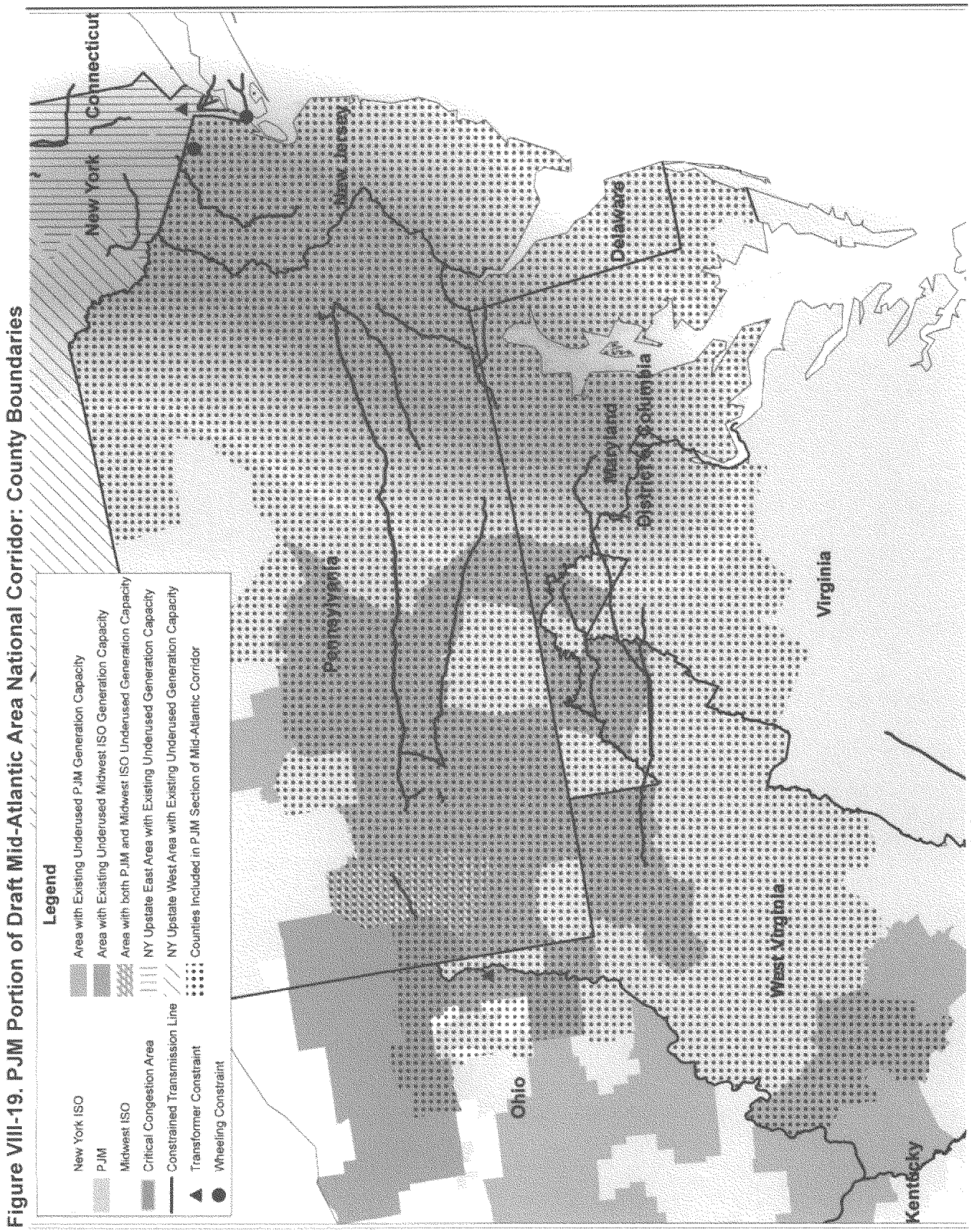


Figure VIII-18. PJM Portion of Draft Mid-Atlantic Area National Corridor: Polygon

Source: U.S. Department of Energy, 2007.



For the section of the draft Mid-Atlantic Area National Corridor within New York, DOE has adopted a somewhat simpler approach based more directly on county boundaries. DOE has identified four areas within New York

for inclusion in the draft Mid-Atlantic Area National Corridor.

The first area is New York City and Long Island. This area is included because it is a sink area.

Second is a central upstate area, extending from New York City northward to include an area around the city of Saratoga Springs, and westward to include an area around the city of Utica. This central upstate area encompasses a number of the existing constraints that limit the delivery of additional electricity in bulk from the source areas to the sink areas. Although easing the constraints in this area could provide benefits in the sink areas, these benefits could be limited unless some of the key constraints further to the north and to the west were also addressed. Therefore, the Department has included the following two additional areas in the draft National Corridor.

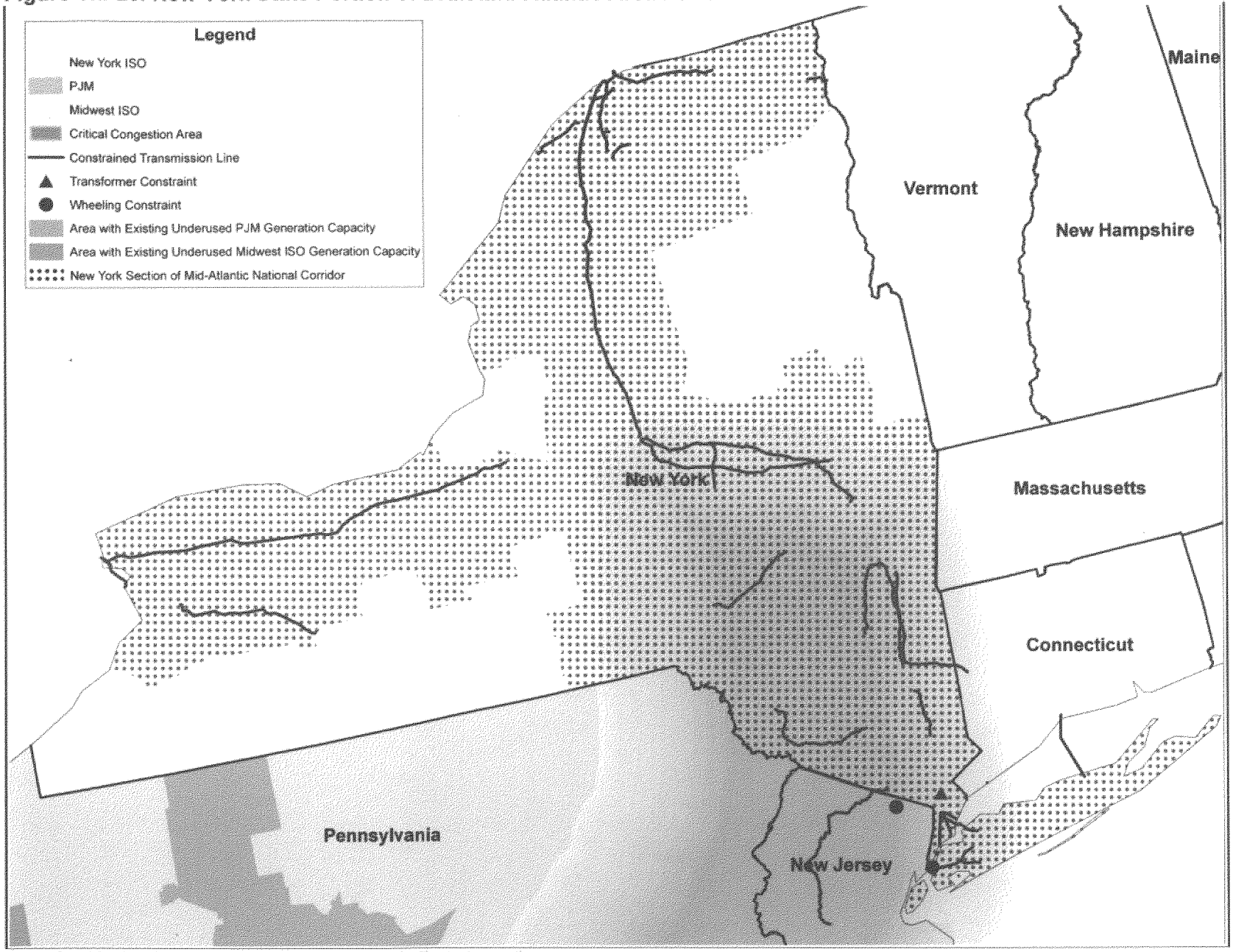
The draft National Corridor includes an area to the south and east of the city of Massena, New York. This area encompasses several transmission constraints that may frequently prevent electricity flows from the source areas to the sink areas.

Finally, the draft National Corridor includes an area between the city of Buffalo and the city of Syracuse. This area is a major electricity pathway that is frequently constrained, preventing electricity flows from the source areas to the sink areas.

The resulting New York section of the draft Mid-Atlantic Area National Corridor, based on the boundaries of the affected counties, is shown in Figure VIII–20. The entire draft Mid-Atlantic Area National Corridor is shown in Figure VIII–21.

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Figure VIII-20. New York State Portion of Draft Mid-Atlantic Area National Corridor



Note: Corridor borders are based on boundaries of affected counties.
Source: U.S. Department of Energy, 2007.

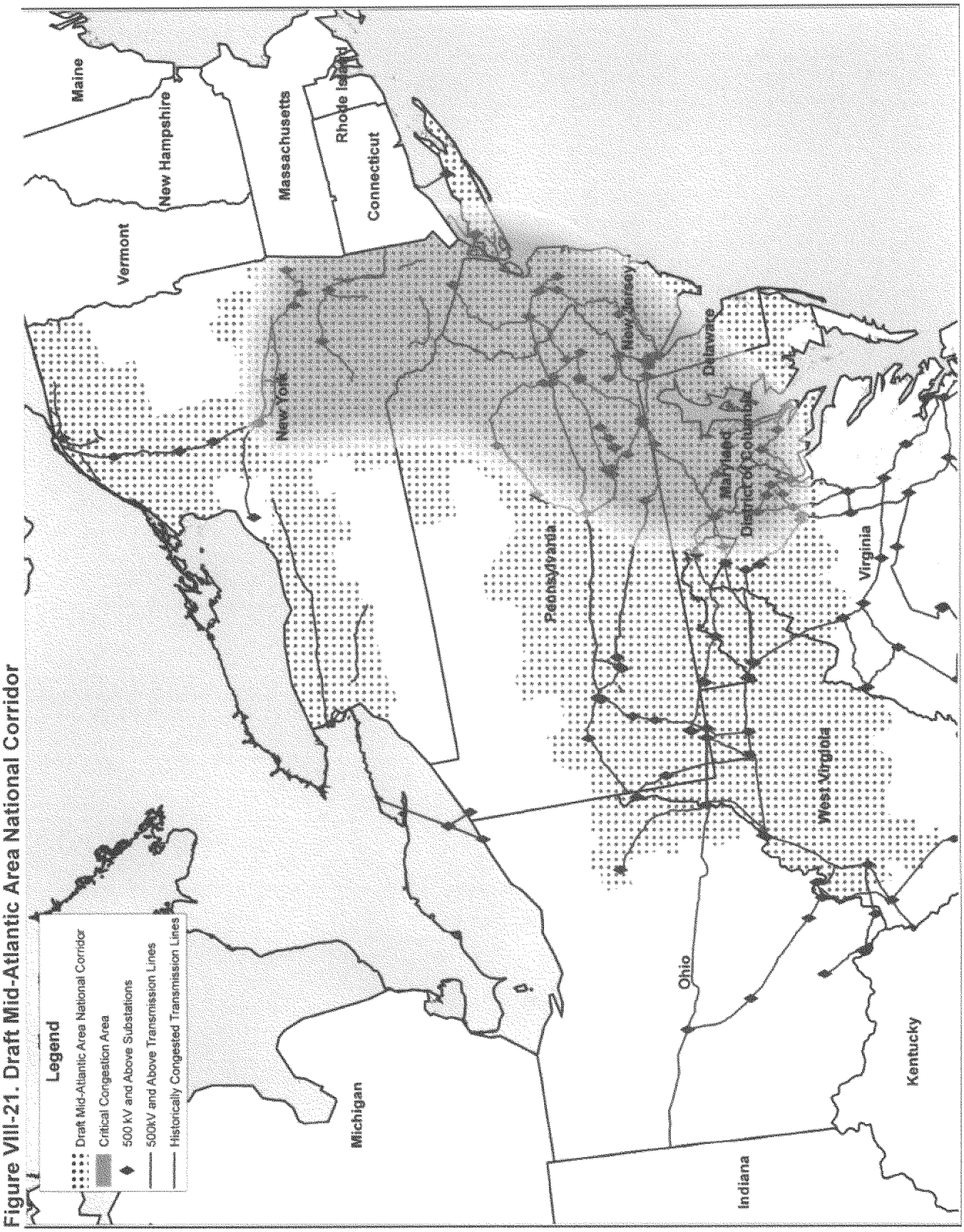


Figure VIII-21. Draft Mid-Atlantic Area National Corridor

Note: County boundaries are shown.
Source: U.S. Department of Energy, 2007.

The list of the counties and cities that comprise the draft Mid-Atlantic Area National Corridor is as follows:

Delaware

Counties: All are included—Kent, New Castle, and Sussex.

District of Columbia

City: Washington.

Maryland

Counties: All are included except Somerset. Those included are Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, Talbot, Washington, Wicomico, and Worcester.

City: Baltimore.

New Jersey

Counties: All are included—Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Sussex, Union, and Warren.

New York

Counties: Albany, Bronx, Broome, Cayuga, Chenango, Clinton, Columbia, Delaware, Dutchess, Erie, Franklin, Fulton, Genesee, Greene, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Otsego, Putnam, Queens, Renssalaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Seneca, Suffolk Sullivan, Ulster, Wayne, Westchester, and Wyoming.

Ohio

Counties: Belmont, Carroll, Columbiana, Harrison, Jefferson, and Stark.

Pennsylvania

Counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Bucks, Butler, Cambria, Centre, Chester, Clearfield, Clinton, Columbia, Dauphin, Delaware, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Somerset, Susquehanna, Union, Wayne, Washington, Westmoreland, Wyoming, and York.

Virginia

Counties: Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Loudon, Madison, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Stafford and Warren.

Cities: Alexandria, Harrisonburg, Fairfax, Falls Church, Manassas, Manassas Park, and Winchester.

West Virginia

Counties: Barbour, Berkeley, Braxton, Brooke, Calhoun, Clay, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, and Wood.

IX. Draft Southwest Area National Corridor

A. Alternatives and Recommendations

In response to the Congestion Study, the Department received a number of National Corridor alternatives and recommendations for the Southern California Critical Congestion Area.

SCE recommended a National Corridor to encompass the general anticipated route of a transmission line it is proposing to build between the Palo Verde hub in Arizona and Palm Springs, California (Devers-Palo Verde 2 or DPV2). EEI supported SCE's recommended National Corridor, citing the need to remedy the existing and growing congestion problems in the Southern California Critical Congestion Area as well as the need for utilities in the State to meet renewable energy requirements.

San Diego Gas and Electric Company (SDG&E) recommended a National Corridor to encompass the general anticipated route of a transmission line it is proposing to build through Imperial County, California to San Diego, California (Sunrise Powerlink).

The Nevada Hydro Company, Inc. (Nevada Hydro) recommended a National Corridor to encompass the general anticipated route of a transmission line associated with its proposed Lake Elsinore Advanced Pumped Storage project (LEAPS) in southern California.

Los Angeles Department of Water and Power (LADWP) noted that the Congestion Study had not mentioned LADWP's proposed Green Path North project (Green Path), which it regards as very important to relieving congestion, maintaining reliability in the area west of Devers, and diversifying generation sources by increasing access to 2000 MW of potential geothermal power in the Imperial Valley region. LADWP stated, ''DOE may wish to consider the Green Path North project as a [National Corridor].''

The California Independent System Operator (CAISO) [91] recommended designation of a National Corridor in southern California, citing the current congestion problem in that area as well as the increased congestion expected as a result of high load growth and the potential development of significant wind generation in the Tehachapi area. CAISO stated that the boundaries of a National Corridor in southern California depend on the success of current planned transmission projects. Thus, according to CAISO, if either DVP2 or Sunrise Powerlink were to fail to materialize, there would be a critical need for another transmission link to one of the major substations in the southern part of the Southwest region and/or the Imperial Valley area. CAISO also recommended consideration of a National Corridor that would connect the broader Tehachapi area to the Los Angeles Basin.

CEC agreed with the classification of southern California as a Critical Congestion Area and noted that ''the San Diego region's transmission problems are acute and graphically illustrate the importance of adequate transmission.'' CEC commented that ''California interests could be served by the Federal [National Corridor] planning and permitting processes under certain limited conditions, given the State's history of impediments in developing needed transmission capacity.'' However, CEC stated that the focus of the Congestion Study was too narrow to accommodate State laws and policies on renewable portfolio standards.[92] CEC further commented that because the Department has not discussed how it intends to address environmental assessments in the National Corridor designation process, it remains concerned whether DOE will designate a National Corridor in a manner that adequately considers California's environmental resources, legislation concerning State designation of electric transmission corridors, and use of existing rights of way.[93]

IID acknowledged that the Congestion Study correctly identified the presence of congestion on the intertie between IID's control area and SCE's control area (Path 42). However, IID noted that it has already identified two feasible solutions to mitigate congestion on Path 42, and

[91] CAISO is the ISO serving most of California.

[92] *See* DOE response, Section II.A above.

[93] *See* DOE response, Section III above.

is working on a 500 kV transmission project that would connect with SDG&E's Sunrise Powerlink to alleviate congestion elsewhere in southern California. IID believed that in light of these projects, as well as other efforts underway, it may not be necessary to designate a National Corridor in southern California at this time.

CPUC recommended against any National Corridor designations in southern California at this time. Noting that skepticism about California's siting of infrastructure may have contributed to the identification of southern California as a Critical Congestion Area, CPUC argued that California stakeholders, including CPUC, CAISO, CEC, and the transmission owners, have worked closely together to achieve significant progress in transmission expansion, completing $1.8 billion worth of transmission projects between 2000 and 2004. CPUC noted that it would soon be considering the adoption of a proposed decision that would grant a rebuttable presumption in a CPUC siting proceeding to a CAISO determination that a proposed project is needed.[94]

CPUC further asserted that specific progress is being made in southern California: DPV2 is in the final stages of permitting; [95] a final permitting decision on Sunrise Powerlink is expected the fourth quarter of 2007 or early in the first quarter of 2008; and the permitting processes for three segments of a transmission project related to wind development in the Tehachapi region (Antelope Segments 1, 2, and 3) are close to completion.[96] CPUC stated that National Corridor designation is unwarranted unless there is evidence that State and regional processes are not addressing the problem in a timely manner.[97] CPUC also argued that the Congestion Study exaggerated the significance of congestion into southern California.[98]

After reviewing the alternatives and recommendations provided,[99] the Department believes that designation of a National Corridor for the Southern California Critical Congestion Area may be warranted. In the following sections, the Department will detail its factual finding of the existence of constraints or congestion that adversely affects consumers in the Southern California Critical Congestion Area and explain the considerations that it believes warrant designation of a National Corridor for this area. Finally, the Department will delineate and explain the specific boundaries of the draft National Corridor.

B. Finding of Constraints or Congestion That Adversely Affects Consumers

The Congestion Study identified southern California as a Critical Congestion Area, based on evidence of historical, persistent congestion caused by numerous well-known transmission constraints into and within southern California. The congestion caused by these constraints is projected to continue or worsen unless it is addressed through remedial actions. In conducting the Congestion Study, the Department identified and assessed these constraints based on a review of the extant transmission studies and expansion plans available prior to the publication of the Congestion Study.

DOE has assessed these constraints at two levels. In the Congestion Study, DOE assessed congestion at the WECC Path [100] level. (See Figures IX–1, –2, and –3, which are taken from the Congestion Study.) More recently, DOE has reviewed congestion data provided by the Western Area Power Administration (WAPA), and branch group congestion data reported by CAISO. ''Branch groups,'' as defined by CAISO, consist of major groups of lines between CAISO and other areas, plus two large internal paths, WECC Path 15 and WECC Path 26. (See Figure IX–4).

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[94] Since submission of its comments on the Congestion Study, CPUC issued a decision that created a rebuttable presumption in favor of certain economic evaluations by the CAISO. *See* Opinion on Methodology for Economic Assessment of Transmission Projects, CPUC D.06–11–018 (Nov. 9, 2006).

[95] Since submission of its comments on the Congestion Study, CPUC approved construction of the portion of DPV2 within California. *See* Opinion Granting a Certificate of Public Convenience and Necessity, CPUC D.07–01–040 (Jan. 25, 2007). The Arizona Commission has not yet ruled on SCE's application for the portion of the project that would be located in Arizona.

[96] Since submission of its comments on the Congestion Study, CPUC approved construction of Antelope Segments 1, 2 and 3. *See* Opinion Granting a Certificate of Public Convenience and Necessity, CPUC D.07–03–012 (Mar. 1, 2007); and Opinion Granting a Certificate of Public Convenience and Necessity, CPUC D.07–03–045 (Mar. 15, 2007). In its comments on the Congestion Study, CPUC also notes the progress of two other projects, which are not subject to its jurisdiction, that would alleviate congestion in southern California: The Desert Southwest Project sponsored by a number of municipal utilities and LEAPS pending at FERC.

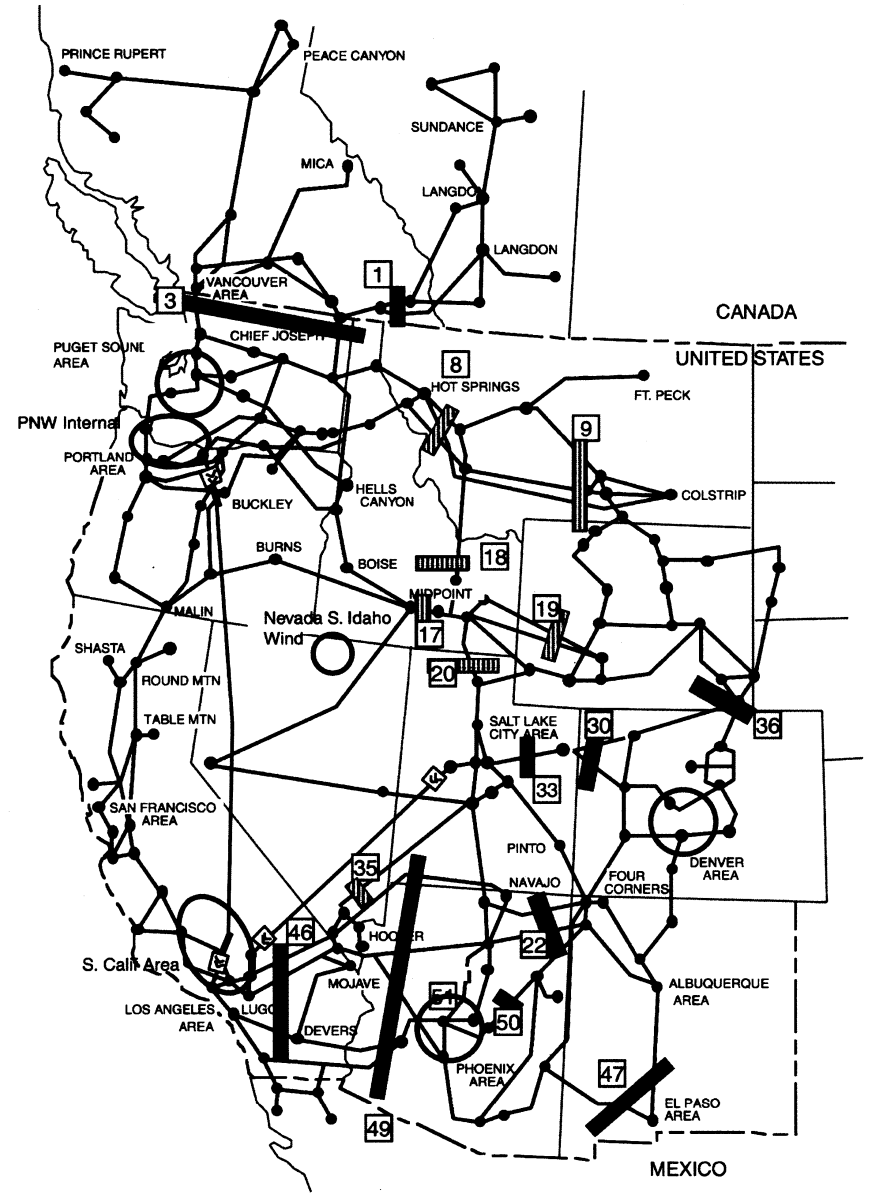
[97] *See* DOE response, Section II.D above.

[98] *See* DOE response, Section VII.C above. CPUC also argued that instead of designating National Corridors in California, the Department should make certain designations of energy corridors on Federal land under EPAct section 368. The Department will address these comments in the ongoing section 368 proceeding.

[99] ACC commented on the Phoenix-Tucson Congestion Area of Concern identified in the Congestion Study as well as the Tucson to Nogales corridor, but did not comment on the Southern California Critical Congestion Area. ACC also emphasized the need for the Department to consult with it prior to designating any National Corridors in Arizona. *See* DOE response, Section IV.B above.

[100] WECC is responsible for coordinating and promoting electric system reliability in all or part of the 14 western States and British Columbia, Canada. To facilitate analysis of grid operations, WECC and its members have defined and numbered a total of 67 major transmission paths in the Western Interconnection. A ''path'' frequently consists of several related transmission elements from one important area of the grid to another, as opposed to a single transmission line.

Figure IX-1. Congestion on Western Transmission Paths Identified by Others Prior to DOE Congestion Study



Congested Transmission Paths

Transmission line (or lines). Solid red or hashed bars "bundle" the lines they cross or touch into a numbered transmission path.

[#] The number alongside each bar is the WECC number for that path.

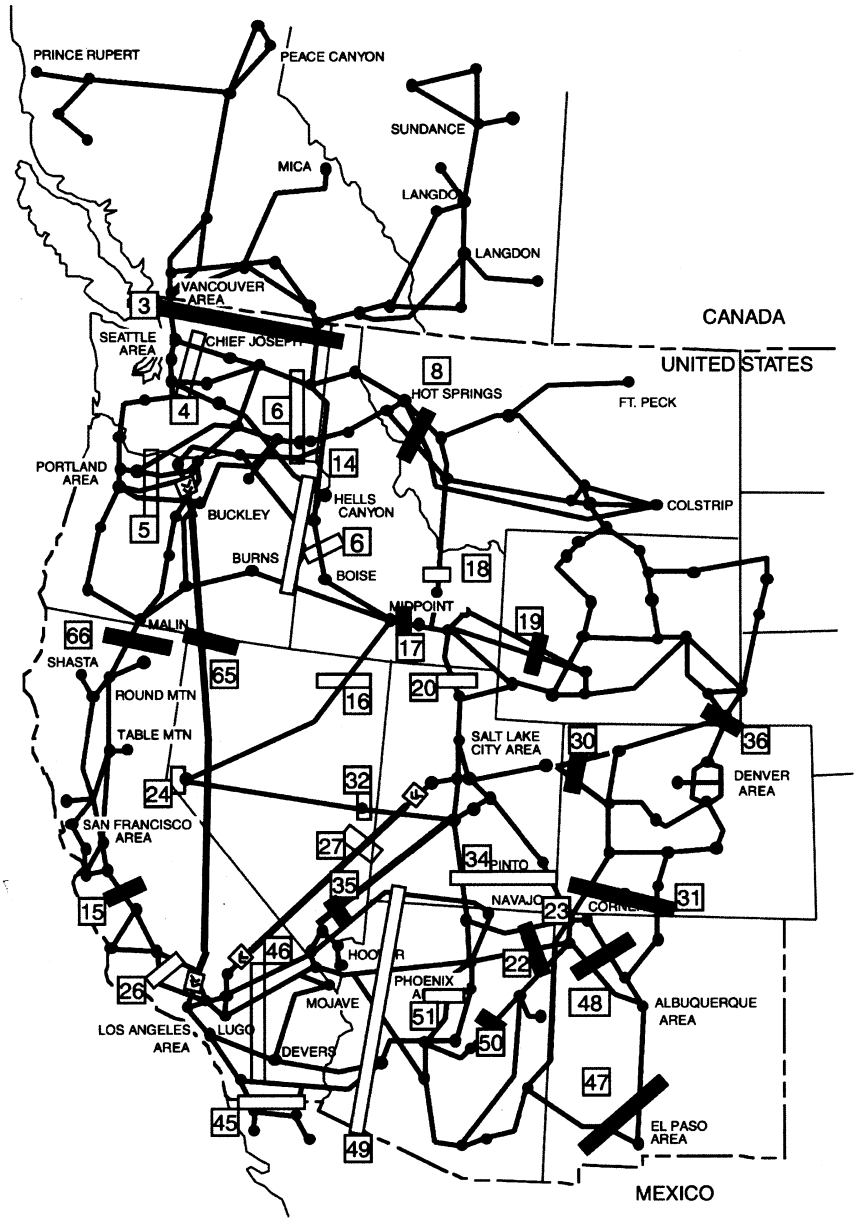
Congestion on the path, based on current or near-term conditions.

Subregional areas with significant existing congestion.

Congestion that would result from future development of generation capacity in the Rocky Mountain area.

Source: DOE Congestion Study, p. 32.

Figure IX-2. Congestion on Western Transmission Paths As Identified from Historical Data, 1999-2005



Transmission line (or lines). White or colored bars "bundle" the lines they cross or touch into a numbered transmission path.

[#] The number alongside each bar is the WECC number for that path.

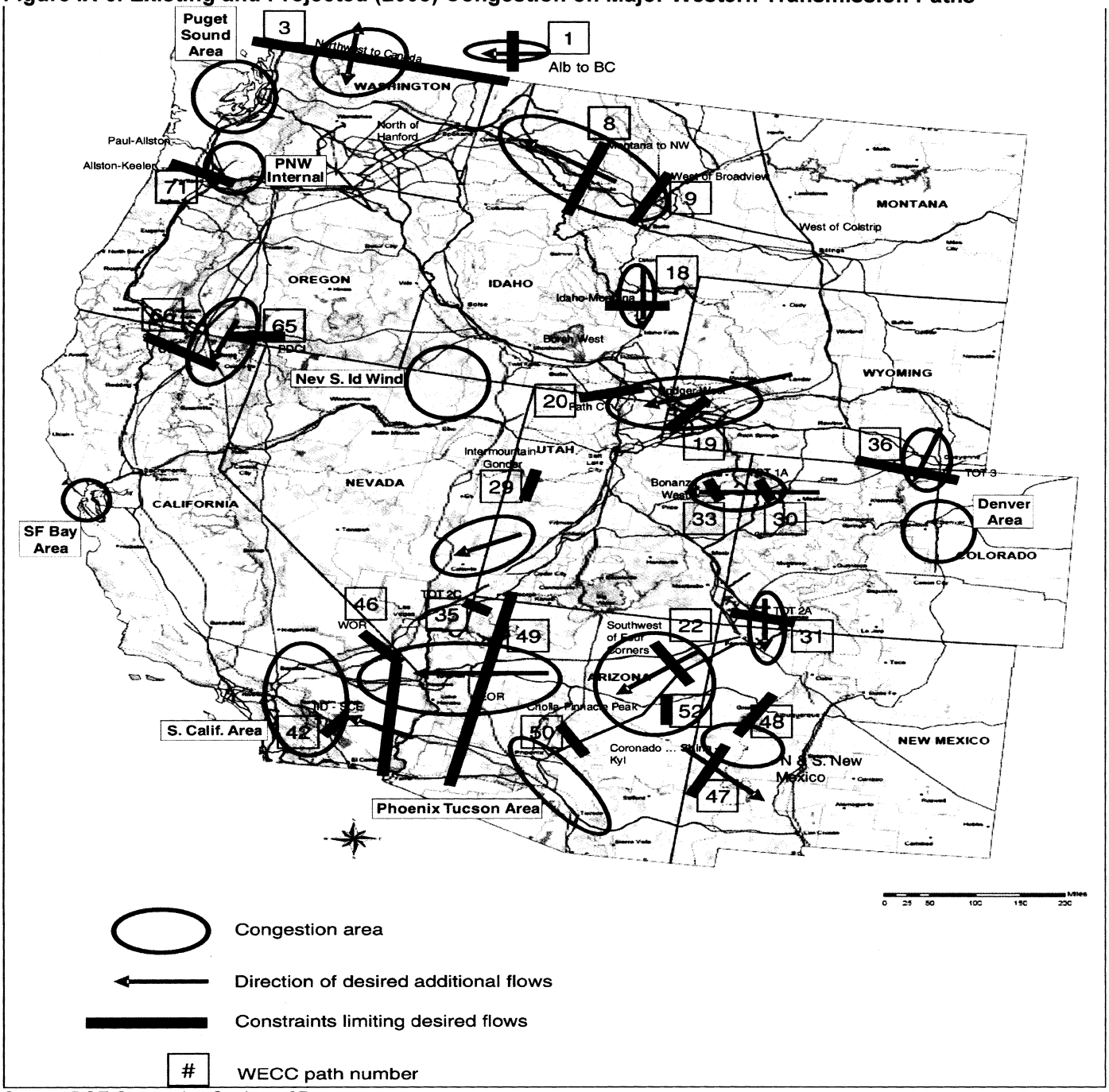
Actual Flow > 75% of OTC greater than 50% of time on path

Actual Flow > 75% of OTC between 25% and 50 % of time on path

Actual Flow > 75% of OTC between 0% and 25% of time on path

Source: DOE Congestion Study, p. 33.

Figure IX-3. Existing and Projected (2008) Congestion on Major Western Transmission Paths



Source: DOE Congestion Study, p. 37.

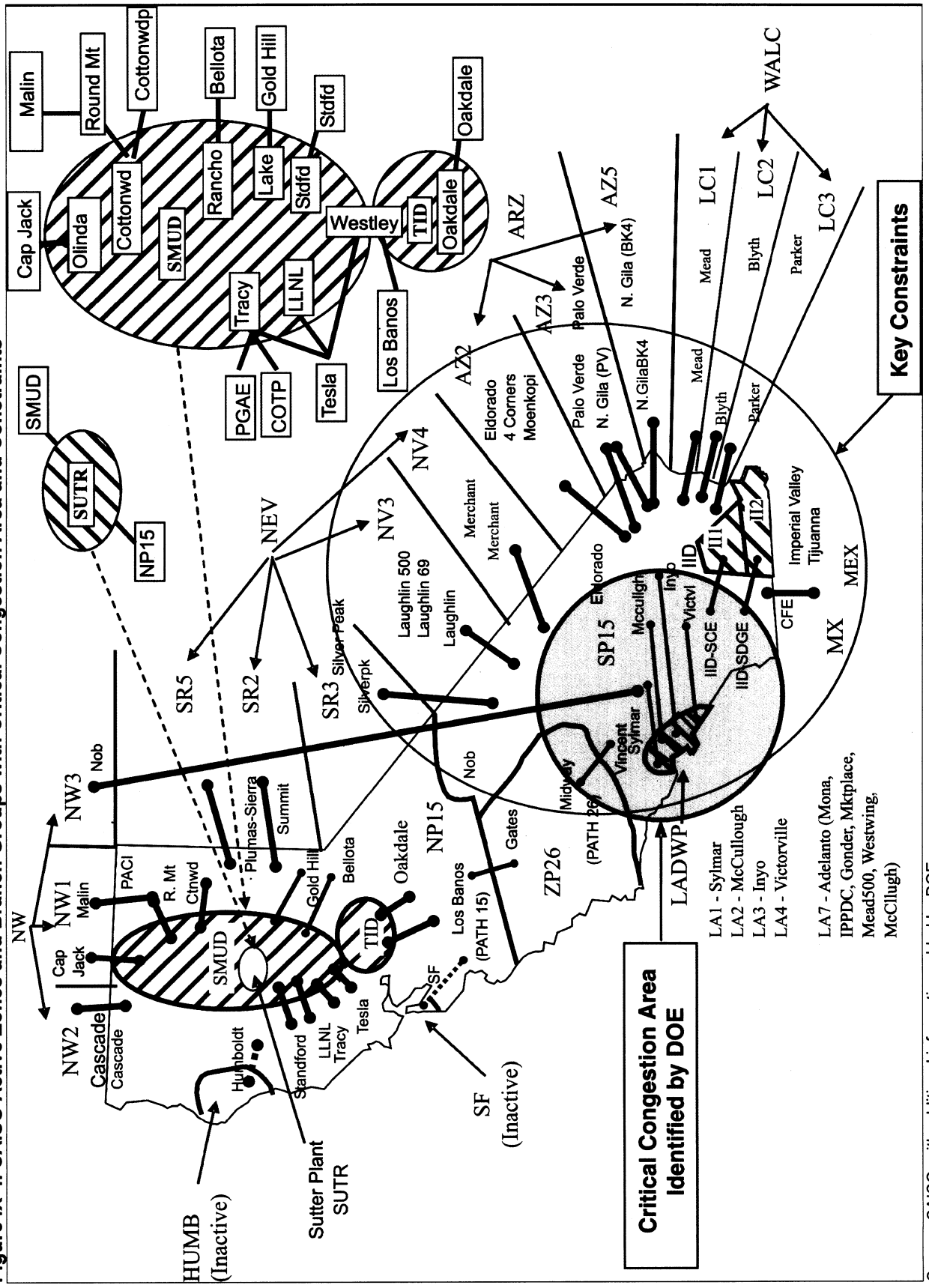


Figure IX-4. CAISO Active Zones and Branch Groups with Critical Congestion Area and Constraints

Source: CAISO, with additional information added by DOE.

The historical review performed for the Congestion Study confirmed the presence of congestion in years 1999 through 2005 on Path 26 (Northern—Southern California), Path 45 (San Diego County—Baja California Norte), Path 46

(West of the Colorado River), Path 49 (East of the Colorado River), and Path 65 (Pacific DC Inter-tie). Path 65 exceeded 75 percent of its flow limit 32 percent of the time and Paths 26, 45, and 49 exceeded 75 percent of their flow limits between 15 to18 percent of the time. The modeling performed for the Congestion Study projected that several of these constraints will continue to cause congestion in 2008. These include Paths 42, 45, 49, and 65. Of these, Path 42 IID-SCE (near Riverside, California) had a projected U75 of 84 percent and a projected U90 of 65 percent.

CAISO data document the presence of congestion on paths going into southern California. The CAISO footprint is divided into three zones. Based on the branch groups, CAISO manages congestion into and out of these zones through operation of a day-ahead and an hour-ahead market.[101] At the CAISO branch group level, constraints were binding and thus produced congestion in both markets in calendar years 2004, 2005, and 2006. (See Table IX–1.)

Table IX-1. Congested Hours and Average Congestion Prices on CAISO Branch Groups into or within Southern California, 2004-2006

Cost Category ($/MW)	Day-Ahead Market						Hour-Ahead Market					
	Percentage of Hours Being Congested (%)			Average Congestion Price ($/MWh)			Percentage of Hours Being Congested (%)			Average Congestion Price ($/MWh)		
	2004	2005	2006	2004	2005	2006	2004	2005	2006	2004	2005	2006
ADLANTOSP_BG		**10%**	**4%**		**$17**	**$4**			**2%**		**$53**	**$28**
BLYTHE_BG	**8%**	**5%**	**4%**	**$77**	**$108**	**$2**	**1%**		**0%**	**$49**	**$96**	**$10**
CFE_BG			0%			$0			0%	$30	$20	$0
ELDORADO_BG	**3%**	**6%**	**9%**	**$4**	**$9**	**$11**	**4%**	**4%**	**4%**	**$12**	**$13**	**$14**
IID-SCE_BG		0%	0%		$49	$2			0%		$33	$50
IID-SDGE_BG			0%			$30			0%			$30
MEAD_BG	**5%**	**8%**	**13%**	**$3**	**$2**	**$4**	**5%**	**4%**	**8%**	**$23**	**$22**	**$20**
NOB_BG	**12%**	**9%**	**10%**	**$3**	**$2**	**$4**	**7%**	**6%**	**10%**	**$11**	**$17**	**$23**
PALOVRDE_BG	**22%**	**23%**	**15%**	**$6**	**$6**	**$9**	**7%**	**8%**	**8%**	**$17**	**$20**	**$29**
PARKER_BG	0%	1%	4%	$4	$3	$3	0%		0%	$7		$20
PATH26_BG	**0%**	**0%**	**5%**	**$22**		**$3**	**0%**		**4%**	**$35**	**$65**	**$15**
SILVERPK_BG	0%	0%	0%	$11		$0			1%	$5		$1

Notes: Branch groups with congestion in the Day-Ahead market of 5% or more of the hours in a given year are shown in bold. CAISO reports congestion data in both import and export directions. The table above shows values only for flows into Southern California.

Sources: CAISO *Annual Report on Market Issues and Performance*, 2005, 2006, and CAISO database for 2006.

In the day-ahead market, the Adelanto, Blythe, Eldorado, Mead, and Palo Verde branch groups had the most binding hours of all the CAISO branch groups. The Palo Verde and Mead branch groups were the most congested in 2006 with binding hours of 15 and 13 percent respectively. Congestion on Palo Verde, in terms of binding hours, diminished somewhat in 2006 as compared to 2004 and 2005, but the congestion prices increased. On Mead, both binding hours and congestion prices were higher in 2006 than in 2004 and 2005. On Path 26, the congestion price diminished after its capacity limit was raised in late June 2005, but the number of binding hours increased. As shown in Table IX–1, these same branch groups are also congested in CAISO's hour-ahead market. The aggregate annual congestion revenues for several of these branch groups are shown in Table IX–2, and range from $122,000 to $17 million in 2006.

[101] Unlike PJM's and NYISO's LMP day-ahead and hour-ahead markets, energy is not traded in CAISO's day-ahead and hour-ahead markets. Instead, market participants submit desired transmission schedules along with bids for adjusting those schedules. Transactions scheduled over congested inter-zonal interfaces are assessed a congestion charge based on these adjustment bids. The day-ahead and hour-ahead markets do not account for intra-zonal congestion, which CAISO must manage during real-time operations.

Table IX-2. Congestion Revenue for Selected CAISO Branch Groups, 2004-2006

BRANCH_GRP	Day-Ahead Market Congestion Revenue ($)			Hour-Ahead Market Congestion Revenue ($)			Total Congestion Cost ($)*		
	2004	2005	2006	2004	2005	2006	2004	2005	2006
BLYTHE_BG	975,233	8,747,667	112,032	12,583	757	10,574	987,816	8,748,424	122,606
ELDORADO_BG	1,365,194	4,608,008	6,650,407	301,208	134,467	25,289	1,666,402	4,742,475	6,675,696
MEAD_BG	1,116,635	1,046,698	2,977,319	415,245	102,866	253,438	1,531,880	1,149,564	3,230,757
PALOVRDE_BG	21,632,116	19,665,658	16,974,558	81,093	105,354	95,990	21,713,209	19,771,012	17,070,548
PARKER_BG	7,739	28,397	158,489	10,809	2	1,887	18,548	28,399	160,376
PATH26_BG	454,330	0	3,209,426	23,445	28,205	123,558	477,775	28,205	3,332,984

*CAISO reports congestion data for both imports and exports. Values shown above are for flows into Southern California only.

Source: CAISO.

CAISO data also demonstrate the existence of congestion on paths within southern California. When congestion arises in real time within one of the three CAISO zones, CAISO must engage in redispatch. CAISO draws from three sources for this redispatch: Reliability-must-run (RMR) units; [102] long-start thermal units lined up day-ahead in return for minimum load cost compensation (MLCC); and other generators whose bids are accepted out of sequence (OOS). The Department recognizes that the magnitude of RMR, MLCC, and OOS costs is, in part, a function of CAISO's market design, and that CAISO is in the process of replacing its zonal congestion management system with an LMP congestion management system. Nevertheless, RMR, MLCC, and OOS costs are indicators of the presence and persistence of intra-zonal congestion. RMR, MLCC, and OOS costs were incurred in 2004, 2005, and 2006.[103] CAISO states further that ''[m]ost of the major points of intra-zonal congestion in 2005 were located in the CAISO's southern congestion zone (SP15).'' [104]

Data from WAPA also demonstrate that routes into SP15 via the Blythe, Gene, Marketplace, and Mead substations are frequently congested, as indicated by numerous denials of requests to reserve capacity for transfers of power into SP15. (See Table IX–3).

Table IX-3. Number and Capacity of Reservations Denied between WAPA and Select Points in SP15, 2004-2006

	Number of Reservations Denied			Capacity of Reservations Denied (MW)		
	2004	2005	2006	2004	2005	2006
Blythe	2	10	32	NA	184	1,653
Gene	10	22	4	NA	784	306
Marketplace	8	3	188	288	109	8,366
Mead	150	461	289	3,324	17,866	13,051

Data source: WAPA.

Thus, the Department has documented the existence of persistent congestion into and within the Southern California Critical Congestion Area, as well as the constraints causing that persistent congestion. As discussed in Section II.A above, whenever there is persistent congestion, buyers must rely on power from less-preferred generating sources, a smaller range of generators is able to serve load, and grid operators have fewer options for dealing with adverse circumstances or unanticipated events, all of which adversely affects consumers. Therefore, the Department finds under FPA section 216(a)(2) that there are ''constraints or congestion that adversely affects consumers'' in the Southern California Critical Congestion Area.

C. Determination That Designation of a Southwest Area National Corridor Is Warranted

Given the presence of constraints or congestion that adversely affects consumers in the Southern California Critical Congestion Area, the Secretary has the discretion to consider designation of a National Corridor. As

[102] RMR units are generally local generators that would otherwise not be commercially viable, but are needed because transmission constraints prevent the use of other generating units. RMR units generally operate subject to cost-of-service contracts that ensure they will remain in business, available to operate when needed.

[103] *See* CAISO, 2006 Annual Report on Market Issues and Performance, p. 6–4, 6–5 (April 2006) (''Total estimated intra-zonal congestion costs for 2004, 2005, and 2006 were $426 million, $222 million, and $207 million, respectively. These costs have been declining over the period due to installation of appropriately located new generation and transmission upgrades.'').

[104] CAISO, 2005 Annual Report on Market Issues and Performance, p. 6–2 (April 2006); *see also* CAISO, 2004 Annual Report on Market Issues and Performance, p. 6–13 (April 2005) (CAISO 2004 Annual Report) (in 2004, ''the bulk of OOS dispatches of incremental energy (96 percent) are for locational constraints within the CAISO's southern zone (SP15)'').

discussed above in Section II.A, the Secretary will determine whether to exercise his discretion based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate. In this section, the Department discusses the considerations that it believes warrant designation of the Southwest Area National Corridor.

1. Reliability Considerations

In recent years, southern California's electricity supply capability, combined with what supplies can be imported from external sources, has been barely enough to meet peak electricity demand. In the summer of 2005, CAISO declared two Stage 2 Emergencies in southern California (July 21 and 22) and a transmission emergency occurred on August 25 that resulted in the curtailment of 900 MW of firm load. In the summer of 2006, rolling blackouts were avoided during a period of extremely hot weather only through a combination of good fortune, extraordinary efforts by the utilities, CAISO, and the Bonneville Power Administration, and timely cooperation by electricity consumers to reduce electricity demand.

In its comments to DOE, CAISO noted that load in southern California has been growing at a rate of approximately 1.5 percent annually, which translates into a total of approximately 657 MW of new load that needs to be served each year. CAISO notes that this rate of load growth, combined with the threat of extreme weather conditions, such as a 1-in-10-year heat wave, could mean that by 2015, the loss of a single critical transmission path could necessitate the curtailment of approximately 1,500 MW of load. CAISO notes that the San Diego area is projected to be deficient in overall generation capacity by the year 2010 due to severe import limits. CAISO also notes looming reliability problems on the South of Lugo path, a major CAISO internal path that serves the Los Angeles Basin. CAISO states that in the event of a double-line contingency on that path at peak load, anywhere from 500 to 1,000 MW of load would need to be curtailed.

Since submission of its comments on the Congestion Study, CAISO has published additional analyses that identify potential reliability problems in southern California. In its assessment for the summer of 2007, CAISO concludes that there is a 23 percent chance of entering into a Stage 1 emergency in the area south of Path 26 (SP26), and a 12 percent chance of entering into a Stage 2 emergency.[105] Further, according to CAISO's 2007 Transmission Plan, a number of transmission enhancements are needed in the Devers area to mitigate existing or projected reliability violations.[106]

Similarly, LADWP stated in its comments to the Department that ''Zone SP26 is a large load center that is currently experiencing reliability problems because of transmission constraints. * * * Zone SP26 will likely continue its dependence on imports, so transmission improvements are needed to avoid future violations of reliability standards. * * *''

In its comments to DOE, SDG&E described the San Diego area's situation as follows:

> The San Diego region has only two points of interconnection to the interstate electric transmission grid: A 500 kV line at SDG&E's Miguel substation that delivers power from the east, and a series of 230 kV lines connecting at the San Onofre Nuclear Generating Station (''SONGS'') switchyard to the north. Taken together, these two paths are capable of serving only a portion of the peak-load requirements of the SDG&E local reliability area. Neither of these paths is capable of serving the full peak-load requirements of the SDG&E local reliability area if the other is out of service. In fact, these two paths are barely sufficient to serve the average load of the region. As a result of growing loads in southern California, coupled with the addition of new generation in the desert southwest, the import capability into the San Diego area is often fully utilized.
>
> To put the San Diego constraints in perspective, there are more than forty-five 500 kV transmission lines in the state of California. The two major utilities serving the Los Angeles area have more than thirty 500 kV AC transmission lines as well as two +/−500 kV DC lines. Phoenix, America's sixth largest city, has eight 500 kV transmission lines and six 345 kV transmission lines. By comparison, among the large electric service areas in the State and the west, San Diego is extremely under-served in terms of high voltage access to the rest of the grid. [footnotes omitted]

The data detailed above indicate that consumers in the Southern California Critical Congestion Area face threats to reliability if existing congestion problems are not addressed. Reliable electricity supplies are vital to the economic and social well-being of any metropolitan area. Electricity supply disruptions may come in many forms, ranging from brief disturbances in power quality and localized outages to large-scale, cascading blackouts. The exact cost of electric supply disruptions is difficult to quantify and varies depending upon the specific circumstances. However, such disruptions can impose enormous costs on consumers and may also, under certain circumstances, pose dangers to public health and safety.

For example, on Saturday, August 10, 1996, a blackout affected several western States, including much of California, for several hours. CEC conducted a survey to gauge the effects and implications of the blackout. The outage affected slightly less than half of California's residential electricity customers, 20 percent of the commercial customers, and 25 percent of the industrial customers. Forty-one percent of the commercial respondents and 31 percent of the industrial respondents said that the outage was ''very disruptive'' to their operations. The losses reported ranged from $40 to $5 million.[107]

Another California analysis provides further insights:

> Blackouts impose a wide range of costs on the economy, but these costs are incredibly difficult to quantify. The primary costs are direct and roughly proportional to the duration of the outage and the amount of undelivered power, including lost production and idled labor. Frequently, however, actual losses are much greater than this. For example, when production systems are shut down, it can take hours or days to restart them and return to full productivity. Often, information technology equipment and even basic manufacturing equipment is damaged when power is suddenly lost; and industries dependent on climate control (from bioscience labs to supermarkets) are threatened with damaged research or spoiled goods. Finally, power interruptions frequently result in lost data, which can be costly and sometimes impossible to reproduce.
>
> Loss of power can also impose longer-term costs by damaging external relationships and customer interactions. For example, a power interruption for an internet-based business can compromise security and harm its reputation, leading to lower sales in the future * * *. For a brick-and-mortar business, inadequate lighting and lack of power to security systems increase the potential likelihood of vandalism and theft. Loss of climate control and telecommunications capabilities makes it especially difficult for restaurants and retail establishments to attract and retain customers. However, all of these factors still only point to direct costs. Indirect costs multiply the impact several times over as the effects of a power interruption ripple through the economy; for example, lost sales by a

[105] CAISO, 2007 Summer Loads and Resources Operations Assessment, p. 3 (March 7, 2007).

[106] CAISO, 2007 Transmission Plan, Table 2–4, item 7; Table 2–5, item 8; and Table 2–6, items 1 and 3 (Jan. 2007).

[107] CEC, A Survey of the Implications to California of the August 10, 1996 Western States Power Outage, p. 43 (June 1997).

retailer can lead to reduced orders to suppliers, and so forth.[108]

Further, one of the considerations identified in FPA section 216(a)(4) is whether ''the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by *lack of adequate* or reasonably priced electricity.'' FPA section 216(a)(4)(A); 16 U.S.C. 824p(a)(4)(A) (emphasis added).

Therefore, the Department believes that reliability considerations warrant designation of a National Corridor for the Southern California Critical Congestion Area.

2. Supply Diversity Considerations

Much of the existing generation fleet on which southern California relies is fueled by natural gas. During 2005, about 38 percent of the electricity generated within California was produced from units fueled by natural gas, as compared with 20 percent from coal, 17 percent from large hydro, and 14 percent from nuclear.[109] California's total annual consumption of natural gas, approximately 2.2 trillion cubic feet, would make this State the tenth largest natural-gas consuming ''country'' in the world. The State's industrial and electricity-generation sectors consume the most natural gas, approximately 66 percent of the total amount. Natural gas used for electricity generation is the largest contributor to the State's growing demand rate, one percent per year.[110] One of the consequences of congestion in southern California is that it prolongs and exacerbates the area's dependence on natural gas.

Natural gas is relatively high in price and must be purchased in markets that are highly volatile and subject to unanticipated international trends and adverse events. Inadequate transmission capacity leaves consumers in the Southern California Critical Congestion Area exposed, perhaps increasingly, to the higher prices and higher price volatility associated with this generation fuel, with a resulting impact on business certainty, especially for industrial consumers. Thus, economic growth may be jeopardized.

Moreover, the Department takes note that CPUC has adopted an interim Emissions Performance Standard, which is a facility-based emissions standard requiring that all new long-term commitments for base-load generation to serve California consumers be with power plants that have emissions no greater than a combined cycle gas turbine plant. In addition, the State of California has established standards requiring load-serving entities to meet 20 percent of their electricity needs through renewable-based generation capacity (wind, geothermal, and solar) by 2010, and 33 percent by 2020. In order to meet these goals and to provide for steady economic growth, consumers in the Southern California Critical Congestion Area will need additional transmission access to a range of sources of supply, particularly renewable energy.

Further, one of the considerations identified in FPA section 216(a)(4) is whether ''(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted.'' FPA section 216(a)(4)(B); 16 U.S.C. 824p(a)(4)(B).

Therefore, the Department believes that supply diversity considerations warrant designation of a National Corridor for the Southern California Critical Congestion Area.

3. National Defense and Homeland Security Considerations

The Southern California Critical Congestion Area is home to 20.7 million people (7.0 percent of the Nation's 2005 population) [111] and produces about $950 billion of gross state product (7.7 percent of the 2005 gross national product).[112] Given the large number of military and other facilities in the Southern California Critical Congestion Area that are extremely important to the national defense and homeland security, as well as the vital importance of this populous area to the Nation as an economic center, any deterioration of the electric reliability or economic health of this area would constitute a serious risk to the well-being of the Nation. Further one of the consideration identified in FPA section 216(a)(4) is whether ''the designation would enhance national defense and homeland security.'' FPA section 216(a)(4)(E); 16 U.S.C. 824p(a)(4)(E).

Therefore, the Department believes that national defense and homeland security considerations warrant designation of a National Corridor for the Southern California Critical Congestion Area.

D. Boundaries of the Draft Southwest Area National Corridor

In this section, the Department first explains how it determined the general extent of the draft Southwest Area National Corridor using a source-and-sink approach. Then, the Department explains how it delineated specific boundaries for the draft Southwest Area National Corridor.

1. General Extent of the Draft Southwest Area National Corridor

In order to set the boundaries of the draft Southwest Area National Corridor, DOE used the general source-and-sink approach described above in Section III. The sink areas are the locations of the consumers adversely affected by the persistent congestion documented in Section IX.B above. Specifically, the sink areas are the urban areas downstream of the constraints identified in Section IX.B above, including the cities of Los Angeles, San Bernardino, Riverside, Anaheim, San Diego, and other nearby municipalities.

With regard to selecting source areas, as discussed in Section III above, the Department was guided by the considerations identified in FPA section 216(a)(4). In particular, the Department focused on the considerations of ensuring adequate supplies of power [113] and diversifying supply.[114] Applying those considerations, DOE identified as source areas locations with substantial amounts of existing, under-used generation capacity (see Table IX–4), and locations with potential for substantial development of wind, geothermal, or solar generation capacity.[115] The existing, under-used generation could readily provide additional power to the sink areas if the required transmission capacity were available. In addition, improved transmission access to the areas with renewable-based generation potential would diversify supply. Figure IX–5 indicates the locations of the source

[108] Bay Area Economic Forum, The Bay Area— A Knowledge Economy Needs Power, pp. 25–26 (April 2001).

[109] CEC Report, Net System Power: A Small Share of California's Power Mix in 2005, Pub. No. CEC–300–2006–009–F, p. 4 (April 2006).

[110] CEC Staff Report, Natural Gas Assessment Update: Executive Summary, Pub. No. CEC–600–2005–003, p. iv (Feb. 2005).

[111] U.S. Census Bureau, State & County QuickFacts, *http://quickfacts.census.gov/qfd/states/00000.html* and *http://quickfacts.census.gov/qfd/states/06/06073.html.*

[112] *See* Northwest Midwest Institute, Total Gross State Product by State, 2001–2005, *http://www.nemw.org/gsp.htm.* Total gross state product attributable to southern California in 2005 was estimated by prorating the State total for 2005 according to the estimated 2005 population in seven California counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

[113] *See* FPA sec. 216(a)(4)(A).

[114] *See* FPA sec. 216(a)(4)(B).

[115] The potential wind, geothermal, and solar generation capacity used to establish the source areas was identified through State-level maps of potential wind, geothermal, and solar resources. Those maps are provided in Appendix B, which is available at *http://nietc.anl.gov.*

areas in southern California and western Arizona.

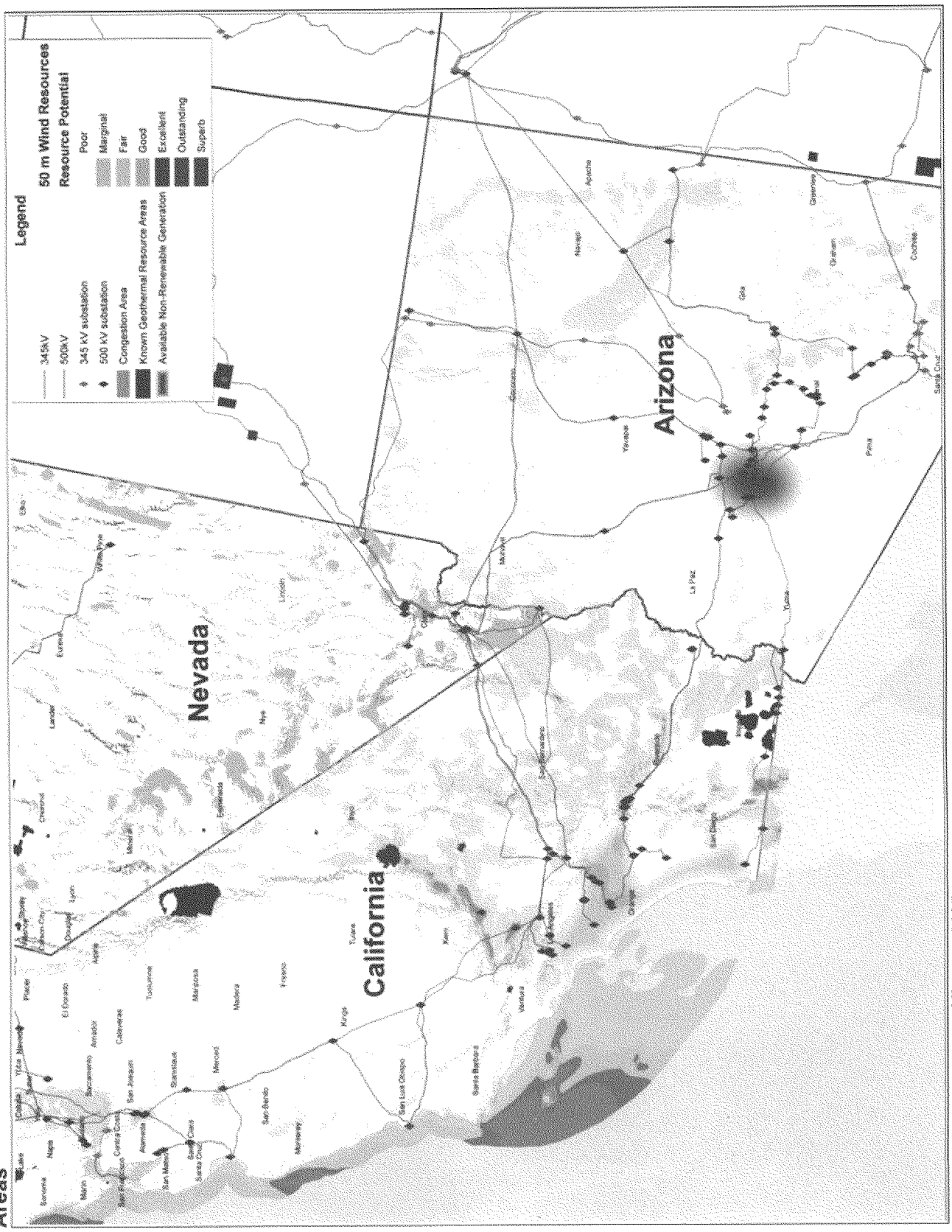
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Table IX-4. Comparison of Capacity Factors for Selected Recently-Constructed Gas-Fired Combined-Cycle Plants in Arizona and California, July and December 2005

Plant Name	Capacity Factor, July 2005	Capacity Factor, December 2005
Arizona Plants		
Desert Basin Power	63.1%	43.1%
Griffith Energy	58.9%	19.0%
Mesquite Gen. Station	85.9%	80.8%
Red Hawk	67.7%	32.3%
South Point Energy Center	81.5%	33.3%
West Phoenix	59.8%	25.8%
California Plants		
Delta Energy Center	90.6%	94.7%
Elk Hills Power	96.8%	99.4%
High Desert Power Project	59.6%	38.7%
Los Medanos Energy Ctr	77.0%	83.0%
Sunrise Power Co	70.5%	75.8%
Sutter Energy Center	48.5%	66.3%
Valley (CA)	57.2%	53.5%

Data source: U.S. EPA CEMS, CEMS Hourly Unit Generation & Emissions Expanded.

Figure IX-5. Southern California Critical Congestion Area and Potential Gas-fired, Wind and Geothermal Generation Source Areas



Source: U.S. Department of Energy, 2007.

Having identified the source and sink areas, DOE sought to delineate a draft National Corridor that would connect those areas, encompass all of the relevant constraints contributing to congestion in southern California, and

encompass a range of potential transmission projects and a range of potential routes. The Department is also including the sink areas in the draft Southwest Area National Corridor, because it is frequently the case that local upgrades to the transmission system and related facilities are needed in such areas in order to achieve the full benefits of developing major new high-voltage transmission lines. Further, the Department has included the source areas in the draft Southwest Area National Corridor.

Finally, the draft Southwest Area National Corridor includes the several substations and related transmission facilities between Los Angeles and the Hoover Dam area southeast of Las Vegas, Nevada. This area and the area around Palo Verde, Arizona are the two principal portals from the east for transferring bulk power into southern California. From both a transmission planning perspective and an operational perspective, it is useful to think of these two pathways as closely related. Adding facilities or changing the operating rules on one is almost certain to require changes in the other so as to maintain an appropriate balance between them.[116]

2. Specific Boundaries of the Draft Southwest Area National Corridor

After determining the general area to be covered by the draft National Corridor, DOE addressed the question of establishing its specific boundaries. DOE relied on county boundaries to determine the perimeter of the draft Southwest Area National Corridor. That is, if a portion of the general area identified in Section IX.D.1 above (i.e., the source areas, the sink areas, and the areas in between encompassing the constraints of concern) is located within a county, then the entire county is assumed to be within the draft National Corridor, and the outer perimeter of the group of counties thus identified defines the draft National Corridor as whole. This approach establishes boundaries that are precise and identifiable. Moreover, this approach helps ensure that the draft National Corridor encompasses a range of potential projects and a range of potential routes, as discussed in Section III above. The resulting draft Southwest Area National Corridor is shown in Figure IX–6.

[116] For example, CAISO states that the Southern California Import Transmission (SCIT) operating nomogram: Places limits on imports into southern California based on a variety of conditions. They include power flows on five major paths into southern California, actual flow East of the River (EOR), and system inertia from generation within southern California. When the SCIT nomogram becomes binding, the CAISO must increment additional generation from a limited number of units in southern California to mitigate flows. Intra-zonal congestion initiating the SCIT nomogram often is due to the large quantity of low cost energy from imports from Arizona or Mexico being used to serve southern California load.

CAISO 2004 Annual Report, p. 6–3.

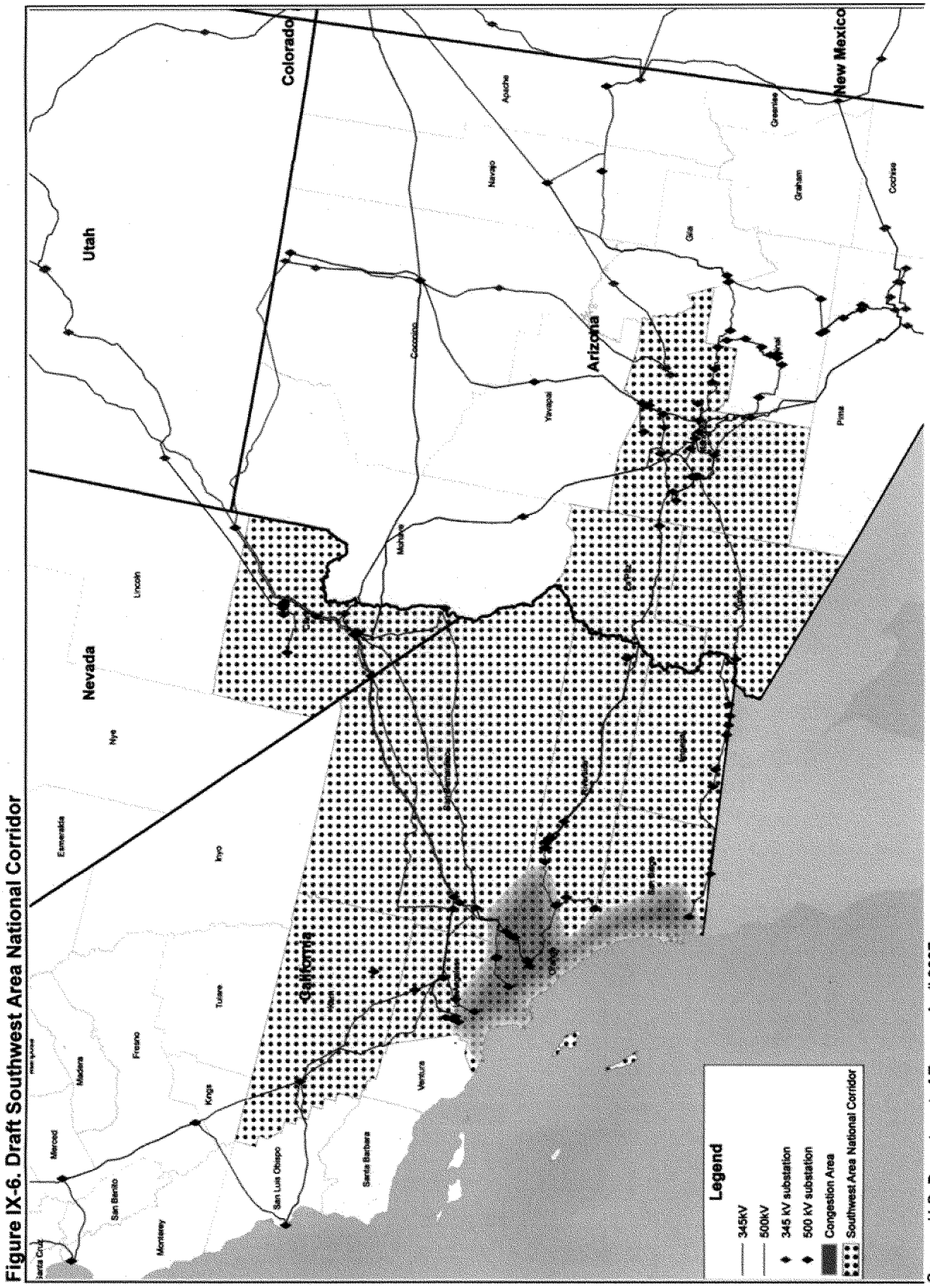


Figure IX-6. Draft Southwest Area National Corridor

Source: U.S. Department of Energy, April 2007.

The counties that comprise the draft Southwest Area National Corridor are as follows:

California

Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

Arizona

La Paz, Maricopa, and Yuma.

Nevada

Clark.

The Secretary of Energy has approved the publication of this notice.

Issued in Washington, DC, on April 25, 2007.

Kevin M. Kolevar,

Director, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 07–2115 Filed 5–4–07; 8:45 am]

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Federal Register

Monday,
May 7, 2007

Part III

Department of Housing and Urban Development

24 CFR Parts 320 and 350
Government National Mortgage Association: Mortgage-Backed Securities (MBS) Program—Payments to Securityholders; Book-Entry Procedures; and Financial Reporting; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 320 and 350

[Docket No. FR–5063–P–01]

RIN 2503–AA19

Government National Mortgage Association: Mortgage-Backed Securities (MBS) Program—Payments to Securityholders; Book-Entry Procedures; and Financial Reporting

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: The Government National Mortgage Association (Ginnie Mae) is proposing regulations that would restrict the issuance of physical certificates representing Ginnie Mae mortgage-backed securities and would clarify that book-entry securities may be withdrawn from the Federal Reserve book-entry system after Ginnie Mae has approved a request for physical certificates, also known as definitive securities, in the same amount. This proposed rule would also eliminate the requirement for a classified balance sheet.

DATES: *Comment Due Date:* July 6, 2007.

ADDRESSES: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that Web site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas R. Weakland, Senior Vice President, Office of Program Administration, Government National Mortgage Association, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 475–4915 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Government National Mortgage Association (GNMA) (Ginnie Mae) guarantees privately issued securities backed by trusts or pools of mortgage loans that are insured or guaranteed by the Federal Housing Administration, the Rural Housing Service, the Department of Veterans Affairs, and the Department of Housing and Urban Development (HUD). Ginnie Mae is a government corporation within HUD, authorized by the National Housing Act (12 U.S.C. 1716 *et seq.*). The regulations governing Ginnie Mae are located at 24 CFR part 300.

II. This Proposed Rule

Ginnie Mae-guaranteed securities are issued in book-entry form. Under current Ginnie Mae regulations, a securityholder may request that the book-entry security be converted into certificated form after initial issuance. Certificates are physical documentation of the ownership of the security. Ginnie Mae proposes to revise the regulations to state that for all securities issued after particular issue dates, physical certificates may only be issued as approved by Ginnie Mae. Also, the proposed rule would clarify that book-entry securities may be withdrawn after Ginnie Mae has approved a request for definitive Ginnie Mae securities.

Ginnie Mae proposes to limit the issuance of physical securities because: (1) Virtually all of Ginnie Mae's investors hold their securities in book-entry form through the Federal Reserve Bank of New York (FRBNY) or through a FRBNY participant; (2) book-entries will decrease the costs for issuers; (3) physical securities provide more opportunities for fraud; and (4) the shift from physical securities to book-entry securities conforms with industry practice.

Additionally, Ginnie Mae proposes to revise the financial reporting rule for issuers participating in its MBS programs. The revisions will remove the requirement that issuers submit classified balance sheets. Ginnie Mae proposes to remove this requirement in order to conform with industry practice.

III. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (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 proposed rule does not impose any federal mandate on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule introduces a streamlining amendment to the financial reporting regulations and a change in the maintenance of Ginnie Mae book-entry and certificated securities. Small entities will not be adversely affected by the more streamlined financial reporting requirement or the book-entry

requirement; in fact, a more streamlined financial reporting requirement may alleviate some burden. Furthermore, all such issuers, regardless of size, are subject to the new requirements proposed by the rule. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this proposed rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's program responsibilities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the order. This proposed rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the order.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2503–0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid control number.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

List of Subjects for 24 CFR Parts 320 and 350

Mortgages, Securities.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 320 and 350 as follows:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citation for 24 CFR part 320 continues to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

2. Revise § 320.5(e) to read as follows:

§ 320.5 Securities.

* * * * *

(e) *Issue Date.* Securities backed by single-family mortgages with issue dates of October 1, 1998, or before, serial notes with issue dates of July 1, 2002, or before, and securities backed by multifamily mortgages with issue dates of February 1, 2002, or before, have been issued in certificated form. Securities issued after these dates will be issued in book-entry form. The Association may approve the issuance of certificated securities for good cause.

* * * * *

3. Revise § 320.10 to read as follows:

§ 320.10 Financial Reporting.

Issuers shall submit to the Association audited annual financial statements within 90 days of their fiscal year end. All financial statements shall include a balance sheet and a statement of operations and cash flows. The audit shall be conducted in accordance with the standards for financial audits of the U.S. Government Accountability Office's *Government Auditing Standards,* issued by the Comptroller General of the United States.

PART 350—BOOK-ENTRY PROCEDURES

4. The authority citation for 24 CFR part 350 continues to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

5. Revise § 350.8(a) to read as follows:

§ 350.8 Withdrawal of Eligible Book-Entry Ginnie Mae Securities for Conversion to Definitive Form.

(a) Eligible book-entry Ginnie Mae securities may be withdrawn from the book-entry system after Ginnie Mae has approved a request for the delivery of definitive Ginnie Mae securities in the same amount.

* * * * *

Dated: April 3, 2007.

Robert M. Couch,

President, Government National Mortgage Association.

[FR Doc. E7–8499 Filed 5–4–07; 8:45 am]

BILLING CODE 4210–67–P



Federal Register

Monday,
May 7, 2007

Part IV

Department of Veterans Affairs

38 CFR Parts 1, 14, 19 and 20
Accreditation of Agents and Attorneys; Agent and Attorney Fees; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 14, 19 and 20

RIN 2900–AM62

Accreditation of Agents and Attorneys; Agent and Attorney Fees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing the representation of claimants for veterans benefits in order to implement provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and to reorganize and clarify existing regulations. The proposed regulations would establish the procedures and rules necessary for VA to facilitate the paid representation of claimants by accredited agents and attorneys after a notice of disagreement has been filed with respect to a case. The intended effect of these regulations is to fulfill Congress' direction that agents and attorneys may be paid for services rendered after a notice of disagreement is filed with respect to a decision by an agency of original jurisdiction while ensuring that claimants for veterans benefits have responsible qualified representation in the preparation, presentation, and prosecution of claims for veterans benefits.

DATES: *Comment Date:* Comments must be received by VA on or before June 6, 2007.

ADDRESSES: Written comments may be submitted by through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM62—Accreditation of Agents and Attorneys; Agent and Attorney Fees.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Michael G. Daugherty, Staff Attorney, Office of the General Counsel (022G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6315. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Statutory Authority—Section 101 of Public Law 109–461

Section 101 of Public Law 109–461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, amends chapter 59 of title 38, United States Code, governing the recognition of individuals for the preparation, presentation, and prosecution of claims for benefits before VA. Prior to the amendments, 38 U.S.C. 5904(a) authorized VA to accredit individuals who show that they are of good character and reputation and qualified to provide competent representation. In current 38 CFR 14.629, VA implemented section 5904(a) by requiring agents to establish their good character and reputation through an application process and pass a written examination administered by VA as a prerequisite to accreditation. Attorneys were presumed to be qualified for VA accreditation based upon membership in good standing of a State bar. The amendments to chapter 59 require VA to: (1) Regulate the qualifications and standards of conduct applicable to accredited agents and attorneys; (2) annually collect information about accredited agents' and attorneys' standing to practice or appear before any court, bar, or Federal or State agency; (3) proscribe accreditation of individuals who have been suspended or disbarred by any such entity without reinstatement; (4) add to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA; and (5) subject veterans service organization representatives and individuals recognized for a particular claim to suspension and exclusion from further practice before VA on the same grounds as apply to agents and attorneys.

Section 101 of Public Law 109–461 also amends the fee provisions in chapter 59 including the point in the VA appeals process at which an agent or attorney can charge fees for representation. The VA appeals process begins when an individual disagrees with a decision made by an Agency of Original Jurisdiction (AOJ), such as a VA Regional Office (RO). To appeal a decision, an individual must file a Notice of Disagreement (NOD) with the AOJ expressing disagreement with the decision and a desire for appellate review. If the AOJ receives a timely NOD, it will change its decision or send the claimant a Statement of the Case (SOC) designed to provide information necessary to appeal the case to the Board of Veterans' Appeals (Board). After submitting a timely NOD, and following the receipt of a SOC, an individual may complete his or her appeal to the Board by timely filing a substantive appeal. Once the appeal has been submitted and assuming the Board has sufficient information to reach a decision, the Board will issue a final administrative decision in the case. Prior to the amendments, section 5904(c)(1) proscribed the charging of fees by agents and attorneys for services provided before a first final decision of the Board in a case. Under the amendments, accredited agents and attorneys may charge fees for services provided after the claimant files a NOD.

The amendments also authorize VA to: (1) Restrict the amount of fees agents or attorneys may charge and subject fee agreements between agents or attorneys and claimants to review by VA, such review to be appealable to the Board; and (2) collect an assessment from any agent or attorney to whom VA pays fees directly from past-due benefits. Further, the amendments eliminate fee matters as grounds for criminal penalties under 38 U.S.C. 5905.

To implement the amendments to chapter 59 and to reorganize and clarify existing regulations, VA proposes to amend 38 CFR parts 14, 19 and 20 relating to the representation of claimants for veterans benefits, the accreditation of individuals who may provide representation, and the limitation on fees. VA also proposes to move regulations relating to remote access to computerized veterans' claims records from part 14 to 38 CFR part 1 concerning release of information from claimant records. VA has made no substantive changes to the remote access regulations and is moving these regulations to part 1 because they are similar in content to other part 1 regulations governing the disclosure of claimant information and will be easier to locate in that part.

Section 14.627—Definitions

We propose to define ''agency of original jurisdiction,'' ''service,'' and ''representation'' to clarify current regulations and assist in implementation of other provisions discussed below. With respect to ''agency of original jurisdiction,'' in *Bates* v. *Nicholson,* 398 F.3d 1355 (Fed. Cir. 2005), the United States Court of Appeals for the Federal Circuit held that the VA General Counsel's final decision to cancel the accreditation of a representative, agent, or attorney may be

appealed to the Board. Accordingly, for purposes of part 14, we propose to clearly state that ''agency of original jurisdiction'' means the VA activity or administration that made the initial determination on a claim or matter, including the General Counsel's cancellation-of-accreditation decisions under 38 CFR 14.633 and decisions regarding the reasonableness of fees and expenses under 38 CFR 14.636 and 14.637. Current § 14.627 provides that an ''attorney'' is a member in good standing of a State bar. We propose to amend that definition consistent with 38 U.S.C. 5904 to additionally provide that an ''attorney'' is an individual who has met the standards and qualifications established by VA in proposed § 14.629(b).

Section 14.629—Requirements for Accreditation of Representatives; Agents; and Attorneys

The introductory text to current § 14.629 tasks the VA Regional Counsel of jurisdiction with resolving any question concerning the current qualifications of an accredited service organization representative, agent, or attorney. Current 38 CFR 14.632 also tasks the Regional Counsel of jurisdiction with determining the qualifications of prospective representatives, agents, and attorneys. Consistent with current practice, we propose to amend the introductory text to § 14.629 to provide that it is the Assistant General Counsel of jurisdiction or his or her designee who manages VA's accreditation program and makes initial determinations concerning the qualifications of prospective representatives, agents, and attorneys. The Assistant General Counsel would accredit qualified individuals and would notify other individuals concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. The Assistant General Counsel's determination concerning the current qualifications of an applicant is a final decision unless appealed by the applicant to the General Counsel. Any such appeal must be in writing, limited to the evidence before the Assistant General Counsel, and filed with the General Counsel not later than 30 days from the date on which the Assistant General Counsel's decision was mailed. The General Counsel's decision concerning the current qualifications of an applicant is a final decision of the agency not subject to further review. Questions regarding the current qualifications of accredited representatives, agents, and attorneys would be resolved using the procedures in § 14.633.

Section 5904(a)(2) requires agents and attorneys, as a condition of accreditation, to establish that they are of good character and reputation; are qualified to render claimants valuable service, and are otherwise competent to assist claimants in presenting claims; possess the level of experience or specialized training specified by VA; and certify to VA that they have satisfied the qualification standards established by VA. Section 5904(a)(3) requires VA to annually collect information about accredited agents' and attorneys' standing to practice or appear before any court, bar, or Federal or State agency, and section 5904(a)(4) prohibits VA from recognizing any agent or attorney who has been suspended or disbarred by any court, bar, or Federal or State agency to which the agent or attorney was previously admitted and not subsequently reinstated.

To implement the accreditation requirements established by Congress, we propose to establish a two-step process for accrediting agents and attorneys that is similar to the process for agents under current § 14.629(b). Individuals desiring accreditation would be required to file with the Office of the General Counsel a written application (VA Form 21a) on which they provide background information relevant to a determination of good character and reputation. Pursuant to the requirements of section 5904(a)(4), applicants would also be required to provide information about their standing to practice or appear before any court, bar, or Federal or State agency, to include a certification of good standing that may be available from the court, bar, or agency, and would be required to provide VA with a release to enable VA to obtain such other information that may be necessary to process the application. Upon a determination that the prospective agent or attorney is of good character and reputation, an applicant would then be given the opportunity to demonstrate his or her qualification to render valuable service to claimants and competence to assist claimants in presenting claims by achieving a score of 75 percent or more on a written examination administered at the office of a VA Regional Counsel or the VA Central Office. Currently, VA notifies prospective claims agents that they will be tested on information available in the United States Code and the Code of Federal Regulations. To assist agents and attorneys in preparing for future accreditation examinations, VA would make relevant materials available in a format widely available to the general public.

In section 5904(a)(2), Congress gave VA the option of requiring a specific ''level of experience'' or ''specialized training'' as a condition of accreditation. VA has determined that successful completion of a written examination that covers veterans benefits law and procedures would provide the best proof that an agent or attorney has the requisite qualifications for accreditation under section 5904(a)(2). First, State licensing authorities generally require an examination to be admitted to the bar. Accordingly, attorneys are familiar with written examinations as an objective measure of their skill, competence, and qualifications to represent clients. Second, written examinations are a practical means of carrying out Congress' intent to allow veterans to choose their own counsel. An attorney who meets the character and reputation requirements and possesses the requisite knowledge of veterans benefits law could take the examination without waiting to achieve a specific ''level of experience'' or attending ''specialized training,'' which may not be readily available or adequately demonstrate the competence desired by Congress. Third, under current § 14.629(b), VA Regional Counsels administer exams to applicants for accreditation as claims agents and that procedure could be made available to attorneys at each of the Regional Counsel's local offices. Finally, Congress has also authorized the United States Patent and Trademark Office (PTO) to accredit agents and attorneys for purposes of practice before that agency. Under that authority, the PTO determined that, among other requirements not relevant to VA's accreditation program, objective testing would suffice for purposes of making qualification determinations. We believe that successful completion of a written examination demonstrates that an agent or attorney possesses a level of knowledge better than mere evidence of training or a period of experience. Therefore, proposed § 14.629(b) would implement a testing requirement that is based upon our experience in accrediting agents under current procedures and the PTO's experience in accrediting agents and attorneys under 37 CFR part 11.

In proposed § 14.629(b), VA would also expand its inquiry into an applicant's background to provide a more complete basis for the Department's determination of good character and reputation. In addition, proposed § 14.629(b) would provide specific examples of conduct that would

demonstrate a lack of good character and reputation for purposes of accreditation.

Proposed § 14.629(c) would amend provisions relating to representation provided by attorneys, law firms, law students and paralegals to clarify that a claimant must use a VA Form 21–22a to appoint an accredited attorney. As will be discussed further below, a VA Form 21–22a, signed by the claimant, is also necessary to authorize VA to disclose protected claimant information to an agent or attorney. VA intends to facilitate efficient adjudication of claims through universal use of this form. VA's field personnel cannot efficiently or accurately sort through a variety of appointment forms and releases, many of which would require further legal review to determine whether VA could lawfully release a claimant's information.

Section 14.630—Authorization for a Particular Claim

Section 5903 authorizes VA to recognize any individual for purposes of providing representation on one claim, provided that the individual certifies that he or she will not charge a fee for the representation and files the appropriate power of attorney. Proposed § 14.630 would clarify that a properly executed VA Form 21–22a is necessary to allow VA to disclose claimant information to a person providing representation under the authority of this section. This change is necessary to comply with 38 CFR part 1, which implements the disclosure provisions of the Privacy Act, 38 U.S.C. 5701, and 38 U.S.C. 7332. It would also commit an individual providing representation under this section to comply with the laws administered by VA and the rules of conduct in proposed § 14.632. New paragraph (d) would implement section 5903(b), which authorizes VA to suspend or exclude an individual providing representation under this section on the same basis as accredited agents or attorneys.

Section 14.631—Powers of Attorney; Disclosure of Claimant Information

We propose to amend § 14.631(a) to clarify that a properly executed VA Form 21–22a, signed by the claimant and the accredited representative, agent, attorney, or individual authorized to provide representation for a particular claim, is required for purposes of both representation and VA's disclosure of claimant information to the individual designated on the form.

Current § 14.631(b), which permits attorneys to submit declarations of representation on letterhead, would be removed to reflect Congress' amendment of section 5904 and to comply with the disclosure provisions in 38 CFR part 1. VA acknowledges that this change would impose some additional responsibilities in the near-term for attorneys who use letterhead declarations in their veterans' law practice. However, the use of a standard authorization form, with language that VA has approved as legally sufficient, will expedite VA's correspondence with attorneys and ensure that claimant information is released only according to law.

Redesignated § 14.631(c) would not include the procedure for an organization or individual to decline representation, which we propose to remove consistent with the signature requirement in proposed § 14.631(a). In its place we propose to provide guidance regarding the circumstances under which an individual or organization may withdraw from representation and the procedure for withdrawing.

Redesignated § 14.631(f) would clarify that agents and attorneys may limit the scope of their representation regarding a particular claim by describing the limitation in writing on the VA Form 21–22a. This clarification is necessary to ensure that claimants and their agents or attorneys understand the scope of representation.

Section 14.632—Standards of Conduct for Persons Providing Representation Before the Department

We propose to remove current § 14.632 consistent with our above discussion of amendments to the introductory text to § 14.629. In its place, we propose to add new provisions governing the standards of conduct for accredited representatives, agents, and attorneys as required by Congress in section 5904(a). In developing the proposed standards of conduct, we reviewed both the American Bar Association's Model Rules of Professional Conduct and other Federal agency rules of practice. We propose to establish general affirmative duties of honesty, competence, and diligence for all persons providing representation before VA. The proposed rules would also list specific conduct and behavior expressly prohibited in representing claimants before VA. Finally, in addition to the requirement concerning VA's standards of conduct, the rules would also require attorneys to conform to the standards of conduct established by the jurisdictions in which they are admitted to practice. Violation of VA's standards of conduct or those of the jurisdiction in which an attorney is admitted to practice, would be a basis for cancellation of accreditation under proposed 38 CFR 14.633.

Section 14.633—Cancellation of Accreditation of Representatives, Agents, and Attorneys

Proposed § 14.633(c) would implement sections 5904(b)(6) through (9) by adding to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA.

We propose to further amend § 14.633 to clarify the roles and responsibilities of VA personnel during cancellation-of-accreditation proceedings. Currently § 14.633(d) requires the Regional Counsel of jurisdiction to initiate an inquiry upon the receipt of information indicating that a representative, agent, or attorney no longer meets accreditation requirements, has engaged in improper conduct, or has demonstrated a lack of competence in providing representation. However, the accreditation program is managed by an Assistant General Counsel at VA's Central Office, and, generally, allegations of misconduct are initially directed to the Central Office for evaluation. As a result, we have determined that it would be more efficient for the Assistant General Counsel managing the program to handle all inquiries and forward certain investigative tasks to a Regional Counsel as necessary. Accordingly, in proposed § 14.633(d), we state that the Assistant General Counsel of jurisdiction shall conduct the inquiry into allegations that may warrant suspension or cancellation of accreditation under § 14.633(b) through (d).

Currently, § 14.633(e) distinguishes representatives from agents and attorneys in that representatives are immediately suspended upon notification of the General Counsel's intent to cancel accreditation. However, section 5901(b)(2) subjects representatives to suspension and exclusion on the same basis as agents and attorneys. Because all individuals providing representation for VA claimants are held to the same standards of conduct, and subject to suspension and exclusion on the same basis, we propose to amend § 14.633(e) to provide accredited representatives and individuals providing representation under § 14.630 with the same procedural rights as are afforded to accredited agents and attorneys.

Additionally, the process for notifying agents and attorneys of VA's intent to cancel accreditation in current § 14.633(e) provides a period of only 10

days for an agent or attorney to decide whether a hearing is appropriate or to submit additional evidence and does not require an agent or attorney to answer VA's notice. In proposed § 14.633(e), we propose to notify the individual providing representation under § 14.630, representative, agent or attorney of VA's intent to cancel accreditation, the right to submit additional evidence, and the right to request a hearing by certified or registered mail. We would also require the individual to provide VA with an answer, in oath or affidavit form or the form specified for unsworn declarations under penalty of perjury in 28 U.S.C. 1746, responding to VA's notice. The answer would include a statement of facts that constitute the individual's defense to VA's reasons for cancellation and would admit or deny each allegation contained in VA's notice of intent to cancel accreditation. Failure to deny an allegation would be treated as an admission of the allegation. Individuals receiving notice of intent to cancel accreditation would have 30 days from the date the notice was mailed to provide the answer to VA, submit additional evidence, and request a hearing on the matter. Any request for a hearing would be made in the answer. Failure to file an answer or request a hearing within the time allowed would result in the Assistant General Counsel closing the evidentiary record at the end of the 30-day period and forwarding the record and a recommendation to the General Counsel for a final decision.

Currently, § 14.633(f) through (g) provides that the General Counsel may cancel an accreditation after notice and opportunity for a hearing conducted by a hearing officer who is not an employee of the Office of the Regional Counsel. However, in some cases, the VA Central Office is a more appropriate forum for the hearing because the evidence required to conduct a hearing is located at or near the Central Office, or the events and circumstances providing the basis for the hearing took place at or near the Central Office. As a result, referral to a Regional Office for a hearing may unnecessarily delay cancellation proceedings. In § 14.633(f), we propose to establish an alternate hearing location at the VA Central Office following the same general procedure as exists in current rules for a Regional Office hearing with the exception that the Director of the Compensation and Pension Service would appoint the hearing officer and the Assistant General Counsel or the Assistant General Counsel's designee would present the evidence for VA. In both instances, the General Counsel would make the final decision on suspension or cancellation of accreditation based on the recommendation of the Assistant General Counsel.

Current § 14.633(f) does not restrict VA's ability to schedule a hearing in disaccreditation proceedings. As discussed above, proposed § 14.633(e) requires individuals served with notice of intent to cancel accreditation to file an answer with the Office of the General Counsel within 30 days from the date the notice was mailed. To ensure that an individual receives adequate notice of a hearing conducted under § 14.633 and to prevent a hearing from being scheduled during the 30-day period allowed for an answer, we propose to require that a hearing officer provide notice of a hearing at least 21 days before the date of the hearing and to prohibit hearings from being scheduled during the 30-day period allowed for an answer.

In a proceeding under § 14.633, current § 14.633(f) does not establish a deadline for the introduction of evidence by VA or by an individual providing representation under § 14.630, representative, agent or attorney. Unlike a benefits claim, in a § 14.633 proceeding, the evidence of record associated with a decision to suspend or cancel accreditation should be sufficiently developed at the completion of a hearing such that no additional evidence relevant to the General Counsel's decision is likely to exist, and, as a result, the record can be closed at the completion of the hearing. Accordingly, in proposed § 14.633(g), we state that, if an individual has not provided VA with an answer within 30 days from the date the notice was mailed, the record will be closed; otherwise the record will be closed 10 days after the completion of the hearing. The procedures in § 14.633(g) are necessary to provide individuals an expeditious decision on cancellation of their accreditation and to ensure that veterans receive competent representation.

To maintain the integrity of the record and ensure expeditious processing, we would also make corresponding technical amendments in parts 19 and 20 to prohibit the parties from introducing additional evidence after the record is closed and before the Board of Veterans' Appeals renders a decision on the matter. A decision of the General Counsel to close the record in a § 14.633 proceeding at the completion of a hearing in no way limits the ability of the Board of Veterans' Appeals to conduct a de novo review of the material issues of fact and law in the record on appeal or to remand to the General Counsel under 38 CFR 19.9 for any action essential for a proper appellate decision.

Under current § 14.633(g), the decision of the General Counsel to suspend or cancel the accreditation of an individual providing representation under § 14.630, representative, agent, or attorney is final. However, the regulation does not prescribe the procedure required to appeal such a decision. We propose to amend § 14.633(g) to provide that appeals of a General Counsel decision cancelling accreditation would be initiated and processed according to the provisions in 38 CFR parts 19 (subpart B) and 20 (subpart C). Proposed § 14.633(g) would also clarify that closing the record 30 days after the date the notice of intent to cancel accreditation was mailed or 10 days after the completion of the hearing would not affect the General Counsel's ability to issue a supplemental statement of the case pursuant to a remand from the Board as provided in § 19.9 of this title or to correct a deficient statement of the case as provided in § 19.31 of this title.

In section 5904(a)(4), Congress prohibited VA from recognizing any agent or attorney suspended or disbarred by any court, bar, or Federal or State agency to which the individual was admitted to practice and not subsequently reinstated. Similarly, in section 5904(b)(7), Congress added as grounds for suspension or exclusion of agents and attorneys from practice before the Department suspension or disbarment by any court, bar, or Federal or State agency to which the individual was admitted to practice and not subsequently reinstated. We interpret these provisions to reflect Congress' intent that the Office of the General Counsel should act upon any information that it receives concerning accredited agents and attorneys who have been barred from practice before any court, bar, or agency. Further, consistent with Congress' intent to maintain the integrity of judicial and administrative proceedings by excluding persons subject to disciplinary sanctions, we believe it is appropriate for VA to notify courts, bars, or agencies of VA's disciplinary proceedings. Accordingly, we propose in § 14.633(h) to provide notice, at the discretion of the General Counsel, of any suspension or cancellation of VA accreditation to the courts, bars, agencies, or jurisdictions in which the agent or attorney is admitted to practice.

Section 14.636—Payment of Fees for Representation by Agents and Attorneys in Proceedings Before the Agency of Original Jurisdiction and Before the Board of Veterans' Appeals

Current 38 CFR 20.609, codified in the Board's Rules of Practice, governs the payment of fees for representation provided by accredited agents and attorneys. In section 5904(c)(1), Congress directed that agents and attorneys may be paid for services provided after a notice of disagreement is filed in a case, directed that fee agreements shall be filed with the Secretary rather than with the Board, and authorized VA to review fee agreements and order a reduction in the fee if it is found unreasonable or excessive, such decisions being appealable to the Board. Accordingly, we have determined that the fee provisions in current § 20.609 are no longer appropriate for inclusion in the Board's Rules of Practice and should be moved to part 14. We propose to redesignate § 20.609 as § 14.636, and amend it consistent with section 5904(c).

Proposed § 14.636(c) would implement section 5904(c)(1) by providing that agents and attorneys may charge fees for services rendered on a particular claim or claims only after an agency of original jurisdiction has rendered a decision on such particular claim or claims and a notice of disagreement has been filed with respect to the decision.

Proposed § 14.636(d)(2)(i) would clarify that a ''disinterested third party'' means an organization, government entity, or person that will not benefit financially from resolution of a claim. This clarification is necessary to prevent agents and attorneys from charging and/or receiving fees for representation provided before a notice of disagreement is filed in a case from third parties who will directly benefit from the outcome of a case. We intend to preclude conflicts of interest that would arise as a result of agents and attorneys receiving fees from these third parties by proposing, in § 14.636(g), that fee agreements involving alleged disinterested third-party payers must identify the relationship between the third-party payer and the veteran, claimant or appellant.

Proposed § 14.636(g) would establish new requirements for fee agreements between claimants and agents or attorneys. Agents and attorneys would be required to file fee agreements with the Office of the General Counsel in Washington, DC, and clearly specify in the agreements whether VA is to directly pay agent or attorney fees out of an award of past-due benefits. Any fee agreement calling for fees exceeding 20 percent of past-due benefits would not be considered a direct-pay fee agreement and, as a result, the agent or attorney would be responsible for collecting any fees for representation from the claimant without assistance from VA.

Current § 20.609 provides that the Board may review a fee agreement between a claimant or appellant and an attorney or agent upon its own motion or that of any party to the agreement and may order a reduction in the fee called for if it finds that the fee is excessive or unreasonable. Proposed § 14.636(i) implements section 5904(c) by shifting the authority to review fee agreements for reasonableness to the Office of the General Counsel, subject to review by the Board. We also propose to clarify that, following a decision by the Office of the General Counsel that the terms of the fee agreement are unreasonable, the agent or attorney must refund any excess payment to the claimant unless the agent or attorney files a notice of disagreement concerning the General Counsel's decision. Such refund must occur within the time allowed for filing a notice of disagreement.

Current provisions in § 20.609 do not clearly establish a deadline for the introduction of evidence in a motion for review of a fee agreement. For the reasons discussed above concerning proceedings under § 14.633, we propose in § 14.636 to close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney files a response to the motion with the Office of the General Counsel or 30 days after the moving party served the motion on the agent or attorney if there is no response. The Assistant General Counsel will forward the record and a recommendation to the General Counsel for a final decision. To maintain the integrity of the record, we would also make corresponding technical amendments in parts 19 and 20 to prohibit the parties from introducing additional evidence after the record is closed and before the Board of Veterans' Appeals renders a decision on the matter. A decision of the General Counsel to close the record in a fee review proceeding in no way limits the ability of the Board to conduct a de novo review of the material issues of fact and law in the record on appeal or to remand to the General Counsel under 38 CFR 19.9 for any other action essential for a proper appellate decision.

Provisions in current 38 CFR part 3 provide that the amount of compensation or pension paid to incarcerated veterans shall be reduced. Provisions in current 38 CFR part 1 provide that a debt owed to VA resulting from participation in a benefits program may be collected through administrative offset. Current § 20.609 states that VA's payment of fees out of past-due benefits is to be paid out of a cash award to the claimant. We propose to clarify in § 14.636(h)(3)(iv) that, under current law, the amount of fees paid to an agent or attorney representing a claimant shall be based upon the amount of past-due benefits actually paid to the claimant after all applicable reductions.

In proposed § 14.636(h), we would implement section 5904(a)(6), which provides that VA may collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits. Such an assessment would be equal to five percent of the amount of the fee required to be paid to the agent or attorney, not to exceed $100 for each such payment.

Section 14.637—Payment of the Expenses of Agents and Attorneys in Proceedings Before the Agency of Original Jurisdiction and Before the Board of Veterans' Appeals

We propose to redesignate and amend current § 20.610 governing payment of expenses to agents and attorneys as § 14.637 for the same reasons as discussed above concerning current § 20.609.

Current provisions in § 20.610 do not clearly establish a deadline for the introduction of evidence in a motion for review of expenses. For the reasons discussed above concerning proceedings under § 14.633, we propose in § 14.637 to close the record in proceedings to review expenses 15 days after the date on which the agent or attorney files a response to the motion with the Office of the General Counsel or 30 days after the moving party served the motion on the agent or attorney if there is no response. The Assistant General Counsel will forward the record and a recommendation to the General Counsel for a final decision. To maintain the integrity of the record, we would also make corresponding technical amendments in parts 19 and 20 to prohibit the parties from introducing additional evidence after the record is closed and before the Board of Veterans' Appeals renders a decision on the matter. A decision of the General Counsel to close the record in a review of expenses in no way limits the ability of the Board to conduct a de novo review of the material issues of fact and law in the record on appeal or to remand to the General Counsel under 38

CFR 19.9 for any other action essential for a proper appellate decision.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection requirements included in this proposed regulation are revisions of existing collections under Office of Management and Budget (OMB) Control No. 2900–0321, which pertains to the appointment of an individual as a claimant's representative, and OMB Control No. 2900–0605, which pertains to the application for accreditation as a claims agent.

We note that the proposed rules would affect two other collections of information. In proposed § 14.629(b), the appeal to the General Counsel of a decision by the Assistant General Counsel to deny an application for accreditation would involve a new collection of information; however, under the current regulations VA denies less than ten applications every year, which is outside the scope of the Paperwork Reduction Act. *See* 5 CFR 1320.3(c)(4). In proposed § 14.633, the General Counsel's decision to cancel accreditation is appealable to the Board. The Board currently maintains a collection of information under OMB Control No. 2900–0085 pertaining to appeals. In the last three years, accreditation cancellation actions have resulted in three appeals to the Board. Based on the infrequent nature of such appeals, a revision of the Board's existing collection of information is unwarranted under the Paperwork Reduction Act.

Comments on the information collections included in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail through *http://www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AM62,'' and must be received on or before June 6, 2007.

Comments by the public on proposed collections of information will help VA in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; and

Enhancing the quality, usefulness, and clarity of the information to be collected; and Minimizing the burden of the collections 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.

OMB assigns control numbers to collections of information it approves. VA 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.

Title: Accreditation of Service Organization Representatives and Agents.

Summary of collection of information: Section 14.629(b)—Under this section, VA requires individuals seeking accreditation to establish their good character, reputation, and qualifications to represent claimants before the Department. VA proposes to require attorneys to file with the Office of the General Counsel VA Form 21a, on which they would provide information relevant to establishing their good character, reputation, and qualifications for representing claimants. After an affirmative determination of character and fitness, VA proposes to require attorneys to demonstrate experience and training in veterans benefits law and procedure by successfully passing a written examination with a score of 75 percent or more. To initially demonstrate fitness for representation and annually thereafter, VA proposes to require agents and attorneys to provide information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to practice or otherwise authorized to appear. Additionally, attorneys shall annually provide VA with a certification of good standing for every jurisdiction admitted.

Section 14.631(a)—Under this section, VA requires claimants to identify to VA the individual acting on their behalf in the preparation, presentation, and prosecution of claims before the Department. VA proposes to require all persons providing representation before the Department to sign this form to indicate acceptance of appointment of representation, and proposes to require agents and attorneys to indicate on the form whether the agent or attorney desires to limit the scope of their representation with this claimant to a particular claim and, if so, to identify the limits of such representation.

Description of need for information and proposed use of information: The collection of information is necessary to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims. VA will use this information to determine whether particular individuals are qualified to represent claimants before VA and to ensure that claimants obtain representation and understand the limits of such representation.

Description of likely respondents: Individuals applying for accreditation as agents and attorneys to provide representation before the Department; individuals accepting appointment for purposes of representation before the Department.

Estimated number of respondents: For applications for accreditation under 38 CFR 14.629(b), in addition to the 20 applications we normally receive from prospective agents in a given year, at a minimum, we anticipate receiving 117 responses from attorneys seeking accreditation in 2007. This number (117) represents the number of attorneys who filed fee agreements with the Board under the predecessor law. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), we anticipate receiving a signature from each person accepting appointment for purposes of representation. Because each accredited service organization representative, agent, and attorney normally represents more than one claimant, we initially estimate 703 respondents (agents and attorneys) will indicate acceptance for purposes of representing an estimated 6,400 claimants before the Department.

It is important to note that our estimated number of respondents for collections of information under both 38 CFR 14.629(a) and 14.631(b) reflects data relating to representation under prior law. We anticipate that the number of respondents will increase slightly in 2007 and to a greater extent in future years based upon increased opportunities for paid agent and attorney representation, but we currently lack the information necessary to develop a reasonably accurate estimate. We may revise our estimated number of respondents based on comments received during the applicable public comment period.

Estimated frequency of responses: For applications for accreditation under 38 CFR 14.629(b), once with the initial application for accreditation, and annually thereafter for accredited agents and attorneys. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), once for each case.

Estimated average burden per response: For applications for accreditation under 38 CFR 14.629(b), 45 minutes. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), 5 minutes.

Estimated total annual reporting burden: For applications for accreditation under 38 CFR 14.629(b), 102 hours in 2007. For individuals accepting appointment for purposes of representation under 38 CFR 14.631(a), 533 hours in 2007.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* At a minimum, this proposed rule would affect the 117 attorneys who filed fee agreements with the Board under the predecessor law and the 47 agents currently accredited by VA. However, it would not have a significant economic impact on these individuals because it would only impose accreditation requirements the costs of which would not be significant. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

There are no Federal Domestic Assistance programs associated with this proposed rule.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: March 23, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR parts 1, 14, 19 and 20 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Redesignate §§ 14.640 through 14.643 as §§ 1.600 through 1.603 respectively.

3. Revise § 14.626 to read as follows:

§ 14.626 Purpose.

The purpose of the regulation of representatives, agents, attorneys, and individuals is to ensure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

4. Amend § 14.627 by:

a. Revising the introductory text.

b. Revising paragraph (a).

c. Redesignating paragraphs (b) through (l) and (m) and (n) as paragraphs (c) through (m) and (p) and (q), respectively.

d. Adding new paragraphs (b), (n), and (o).

e. Revising newly redesignated paragraphs (d), (e), (g), (l), and (m).

The revisions read as follows:

§ 14.627 Definitions.

As used in regulations on representation of VA claimants:

(a) *Accreditation* means recognition by VA of representatives, attorneys, and agents to represent claimants.

(b) *Agency of original jurisdiction* means the VA activity or administration that made the initial determination on a claim or matter, including the proceedings before the General Counsel under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements and expenses for reasonableness.

* * * * *

(d) *Attorney* means a member in good standing of a State bar who has met the standards and qualifications in § 14.629(b).

(e) *Benefit* means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the VA pertaining to veterans, dependents, and survivors.

* * * * *

(g) *Claim* means application made under title 38 U.S.C., and implementing directives, for entitlement to VA benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

* * * * *

(l) *Recognition* means certification by VA of organizations to represent claimants.

(m) *Representative* means a person who has been recommended by a recognized organization and accredited by VA.

(n) *Representation* means the acts associated with the preparation, presentation, and prosecution of claims under laws administered by VA for a claimant as defined in paragraph (h) of this section. Representation includes but is not limited to counseling on veterans benefits, gathering information necessary to file a claim for benefits, preparing claim forms, submitting claim information to VA, and communicating with VA on behalf of a claimant.

(o) *Service* means the delivery of a motion, response, or reply to a person or entity to which it is directed. Proof of service consists of a statement by the person who made service certifying (1) the date and manner of service, (2) the names of the persons served, and (3) the addresses of the place of delivery. For service by mail, proof of service shall include the date and manner by which the document was mailed.

* * * * *

5. Amend § 14.629 by:

a. Revising the introductory text.

b. In paragraph (a)(1), removing ''the Department of Veterans Affairs, and adding, in its place, ''VA''.

c. Revising paragraph (b) heading.

d. Redesignating paragraph (b)(2) as (b)(6), and paragraph (b)(1) as new paragraph (b)(2).

e. Adding a new paragraph (b)(1).

f. Revising newly redesignated paragraph (b)(2) introductory text and paragraph (b)(2)(i).

g. Redesignating paragraphs (b)(2)(vii) and (viii) as paragraphs (b)(2)(viii) and (ix), respectively.

h. Adding a new paragraph (b)(2)(vii).

i. Adding new paragraphs (b)(2)(x), (b)(3), (b)(4), and (b)(5).

j. Revising newly redesignated paragraph (b)(6).

k. Revising paragraph (c) heading.

l. Revising paragraphs (c)(1) and (c)(3).

m. Revising the note following paragraph (c)(4).

The additions and revisions read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

The Assistant General Counsel of jurisdiction will conduct an inquiry and make an initial determination regarding any question relating to the qualifications of a prospective service organization representative, agent, or attorney. If the Assistant General Counsel determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation in paragraphs (a) or (b) of this section, notification of accreditation will be issued by the Assistant General Counsel or the Assistant General Counsel's designee and will constitute authority to prepare, present, and prosecute claims before an agency of original jurisdiction or the Board of Veterans' Appeals. If the Assistant General Counsel determines that the prospective representative, agent, or attorney does not meet the requirements for accreditation, notification will be issued by the Assistant General Counsel concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. The determination of the Assistant General Counsel regarding the qualifications of a prospective service organization representative, agent, or attorney may be appealed by the applicant to the General Counsel. Appeals must be in writing and filed with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Assistant General Counsel's decision was mailed. In deciding the appeal, the General Counsel's decision shall be limited to the evidence of record before the Assistant General Counsel. A decision of the General Counsel is a final agency decision not subject to appeal.

* * * * *

(b) *Accreditation of Agents and Attorneys.* (1) No individual may provide representation to claimants before the Department as an agent or attorney unless he or she has first been accredited by VA for such purpose. The accreditation process consists of a character and fitness determination, and after an affirmative determination of character and fitness, a written examination.

(2) An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s) before the Department. An individual desiring accreditation as an agent or attorney must file a completed application (VA Form 21a) with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, on which the applicant submits the following:

(i) His or her full name and home and business addresses;

* * * * *

(vii) Information concerning the applicant's level of education and academic history;

* * * * *

(ix) Information relevant to whether the applicant has any physical limitations that would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel; and

(x) Certification that the applicant has satisfied the qualifications and standards required for accreditation as prescribed by VA in this section, and that the applicant will abide by the standards of conduct prescribed by VA in section 14.632 of this part.

(3) Evidence showing lack of good character and reputation includes, but is not limited to, one or more of the following: Conviction of a felony, conviction of a misdemeanor involving fraud, bribery, deceit, theft, or misappropriation; suspension or disbarment from a court, bar, or Federal or State agency on ethical grounds; or resignation from admission to a court, bar, or Federal or State agency while under investigation to avoid sanction.

(4) As a further condition of initial accreditation and annually thereafter, each person seeking accreditation as an agent or attorney shall submit to VA information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to practice or otherwise authorized to appear. Applicants shall provide identification numbers and membership information for each jurisdiction in which the applicant is admitted and a certification that the agent or attorney is in good standing in every jurisdiction in which admitted.

(5) VA will not accredit an individual as an agent or attorney if the individual has been suspended by any court, bar, or Federal or State agency in which the individual was previously admitted and not subsequently reinstated.

(6) After an affirmative determination of character and fitness for practice before the Department, applicants must achieve a score of 75 percent or more on

a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(c) *Representation by Attorneys, Law Firms, Law Students and Paralegals.* (1) After accreditation by the General Counsel, an attorney may represent a claimant upon submission of a VA Form 21–22a, (Appointment of Attorney or Agent as Claimant's Representative).

* * * * *

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under § 14.631(a), if the claimant's written consent is furnished to VA. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. The written consent must include the name of the veteran, or the name of the appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable VA file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable VA records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. The signed consent must be submitted to the agency of original jurisdiction and maintained in the claimant's file. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings before a Member or Members of the Board at VA field facilities, the consent must be presented to the presiding Member of the hearing as noted in paragraph (d).

* * * * *

Note to § 14.629: A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under § 14.631(a) as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records as described in §§ 1.600 through § 1.603 in part 1 of this chapter.

* * * * *

6. Amend § 14.630 by:

a. Revising paragraph (a).

b. Revising paragraph (b)(1) introductory text.

c. Adding paragraphs (c) and (d) immediately preceding the authority citation at the end of the section.

The revisions and additions read as follows:

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A power of attorney executed on VA Form 21–22a (Appointment of Attorney or Agent as Claimant's Representative), and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the agency of original jurisdiction where the claim is presented. The power of attorney identifies to VA the claimant's appointment of representation and authorizes VA's disclosure of information to the person representing the claimant.

(b) * * * (1) The number of accredited representatives, agents, and attorneys operating in the claimant's geographic region;

* * * * *

(c) Persons providing representation under this section must comply with the laws administered by VA and with the regulations governing practice before VA including the rules of conduct in § 14.632 of this part.

(d) Persons providing representation under this section are subject to suspension and or exclusion from representation of claimants before VA on the same grounds as apply to representatives, agents, and attorneys in § 14.633 of this part.

* * * * *

7. Amend § 14.631 by:

a. Revising the section heading.

b. Revising paragraph (a) introductory text.

c. Adding paragraph (a)(1)(iv).

d. In paragraph (a)(2), removing ''Department of Veterans Affairs'' and adding, in its place, ''VA''.

e. Removing paragraph (b).

f. Redesignating paragraphs (c) through (g) as paragraphs (b) through (f).

g. Revising newly redesignated paragraph (c).

h. In newly redesignated paragraph (e)(1), removing ''the Department of Veterans Affairs'' and add, in its place, ''VA''.

i. Revising newly redesignated paragraph (f).

The revisions and addition read as follows:

§ 14.631 Powers of attorney; disclosure of claimant information.

(a) A power of attorney, executed on either VA Form 21–22 (Appointment of Veterans Service Organization as Claimant's Representative) or VA Form 21–22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant before VA and to authorize VA's disclosure of information to any person or organization representing a claimant before the Department. Without the signature of a person providing representation for a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney, the appointment is invalid, and the person appointed to provide representation is under no obligation to do so. The power of attorney shall meet the following requirements:

(1) * * *

(iv) An individual providing representation on a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney; and

* * * * *

(b) VA may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word ''only'' with reference to the individual representative.

(c) An organization, individual providing representation on a particular claim under § 14.630, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may withdraw from representation if such withdrawal would not adversely impact the claimant's interests. Withdrawal is also permissible if a claimant persists in a course of action that the organization or individual providing representation reasonably believes is fraudulent or

criminal and is furthered through the representation of the organization or individual; the claimant fails to uphold an obligation to the organization or individual providing representation regarding the services of the organization or individual; or other good cause for withdrawal exists. An organization or individual providing representation withdraws from representation by notifying both the claimant and the agency of original jurisdiction in writing prior to taking any action to withdraw and takes steps necessary to protect the claimant's interests including, but not limited to, giving advance notice to the claimant, allowing time for appointment of alternative representation, and surrendering any documents provided by VA in the course of the representation.

* * * * *

(f)(1) A power of attorney may be revoked at any time, and an agent or attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney executed by the claimant and the organization or individual providing representation shall constitute a revocation of an existing power of attorney.

(2) If an agent or attorney limits the scope of his or her representation regarding a particular claim by so indicating on VA Form 21–22a, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

* * * * *

8. Revise § 14.632 to read as follows:

§ 14.632 Standards of conduct for persons providing representation before the Department.

(a)(1) All persons acting on behalf of a claimant shall faithfully execute their duties as individuals providing representation on a particular claim under § 14.630, representatives, agents, or attorneys.

(2) All individuals providing representation are required to be truthful in their dealings with claimants and VA, and shall conduct themselves in accordance with the non-adversarial nature of practice before the agency of original jurisdiction and the Board. The general provision on non-adversarial practice does not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(b) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall:

(1) Provide claimants with competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations;

(2) Act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.

(c) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall not:

(1) Violate the standards of conduct as described in this section;

(2) Circumvent a rule of conduct through the actions of another;

(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;

(4) Violate any of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations;

(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable, excessive, or otherwise prohibited by law or regulation;

(6) Solicit, receive, or enter into agreements for gifts in lieu of fees for representation provided before a notice of disagreement is filed with respect to the case;

(7) Delay, without good cause, the processing of a claim at any stage of the administrative process;

(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA;

(9) Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA;

(10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation; or

(11) Engage in any other unlawful, unprofessional, or unethical conduct.

(d) In addition to complying with standards of conduct for practice before VA in paragraphs (a) through (c), an attorney shall not, in providing representation to a claimant before VA, engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which the attorney is licensed to practice law.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

9. Amend § 14.633 by:

a. Revising the section heading.

b. Revising paragraphs (a), (b), (c) introductory text, and (c)(1).

c. Redesignating paragraph (c)(4) as paragraph (c)(7).

d. Revising newly redesignated paragraph (c)(7).

e. Adding new paragraphs (c)(4), (c)(5), and (c)(6).

f. Revising paragraphs (d) through (g).

g. Adding new paragraph (h).

The revisions and additions read as follows:

§ 14.633 Termination of accreditation of individuals providing representation under § 14.630, representatives, agents, and attorneys.

(a) Accreditation or authority to provide representation on a particular claim under § 14.630 may be canceled at the request of an organization, individual providing representation under § 14.630, representative, agent, or attorney.

(b) Accreditation shall be canceled at such time as a determination is made by the General Counsel that any requirement of § 14.629 is no longer met by a representative, agent, or attorney.

(c) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds, by clear and convincing evidence, one or more of the following:

(1) Violation of or refusal to comply with the laws administered by VA or with the regulations governing practice before VA including the standards of conduct in § 14.632;

* * * * *

(4) Presenting to VA a frivolous claim, issue, or argument. A claim, issue, or argument is frivolous if the individual providing representation under § 14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification, or reversal of existing law;

(5) Suspension or disbarment by any court, bar, or Federal or State agency to which such individual providing representation under § 14.630, representative, agent, or attorney was previously admitted to practice, or disqualification from participating in or

appearing before any court, bar, or Federal or State agency and lack of subsequent reinstatement;

(6) Charging excessive or unreasonable fees for representation as determined by VA, the Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit; or

(7) Any other unlawful, unprofessional, or unethical practice.

(d) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds that the performance of an individual providing representation under § 14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.

(e) As to cancellation of accreditation under paragraphs (c) or (d) of this section, upon receipt of information from any source indicating improper conduct, or incompetence, the Assistant General Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization.

(1) If the result of the inquiry does not justify further action, the Assistant General Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the Assistant General Counsel shall:

(i) Inform the General Counsel of the result of the inquiry and notify the individual providing representation under § 14.630, representative, agent or attorney of an intent to cancel accreditation or authority to provide representation on a particular claim. The notice will be sent to individuals providing representation on a particular claim by certified or registered mail to the individual's last known address of record as indicated on the VA Form 21–22a on file with the agency of original jurisdiction. The notice will be sent to accredited individuals by certified or registered mail to the individual's last known address of record as indicated in VA's accreditation records. The notice will state the reason(s) for the cancellation proceeding and advise the individual to file an answer, in oath or affidavit form or the form specified for unsworn declarations under penalty of perjury in 28 U.S.C. 1746, within 30 days from the date the notice was mailed, responding to the stated reasons for cancellation and explaining why he or she should not be suspended or excluded from practice before VA. The notice will also advise the individual of the right to submit additional evidence and the right to request a hearing on the matter. Requests for hearings must be made in the answer. If the individual does not file an answer with the Office of the General Counsel within 30 days of the date that the Assistant General Counsel mailed the notice, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(ii) In the event that a hearing is not requested, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(iii) The Assistant General Counsel may extend the time to file an answer or request a hearing for a reasonable period upon a showing of sufficient cause.

(f) If a hearing is requested, at the discretion of the General Counsel, it may be held at a VA Regional Office or at the VA Central Office. For hearings conducted at a Regional Office, the Regional Office Director involved will appoint a hearing officer and the Regional Counsel of jurisdiction or his or her designee will present the evidence. For hearings conducted at the VA Central Office, the Director of the Compensation and Pension Service shall appoint a hearing officer and the Assistant General Counsel or his or her designee shall present the evidence. The hearing officer shall not be from the Office of the General Counsel and shall provide notice of the hearing to the individual providing representation under § 14.630, representative, agent, or attorney by certified or registered mail at least 21 days before the date of the hearing. Hearings shall not be scheduled before the completion of the 30-day period for filing an answer to the notice of intent to cancel accreditation. The hearing officer will have authority to administer oaths. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the individual requesting the hearing, an appropriate VA official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The evidentiary record shall be closed 10 days after the completion of the hearing. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Assistant General Counsel within 30 days of closing the record. The Assistant General Counsel will review the record and forward it to the General Counsel with a recommendation for a final decision.

(g) The decision of the General Counsel is a final adjudicative determination of an agency of original jurisdiction and may be appealed to the Board of Veterans' Appeals. The effective date for cancellation of accreditation or authority to provide representation on a particular claim shall be the date upon which the General Counsel's final decision is rendered. Notwithstanding provisions in this section for closing the record at the end of the 30-day period for filing an answer or 10 days after a hearing, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a supplemental statement of the case under 38 CFR 19.31.

(h) In cases where the accreditation of an agent or attorney is cancelled, the Office of the General Counsel may notify all agencies, courts, and bars to which the agent or attorney is admitted to practice.

* * * * *

10. Add § 14.636 to read as follows:

§ 14.636. Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized under § 14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized

organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with § 14.631 of this part in his or her individual capacity as an accredited agent or attorney.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, agents and attorneys may charge claimants and appellants for representation provided on a particular claim or claims within a case only after an agency of original jurisdiction has rendered a decision on such particular claim or claims and a notice of disagreement has been filed with respect to the decision.

(d) *Exceptions*—(1) *Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) *Payment of fee by disinterested third party.* (i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: ''I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.''

(e) *Fees permitted.* Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) *Presumption of reasonableness.* Fees which do not exceed 20 percent of any past-due benefits awarded as defined in paragraph (h)(3) of this section shall be presumed to be reasonable. This presumption may be rebutted by a preponderance of the evidence relating to the factors in paragraph (e) of this section establishing that such fees are not reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

(i) The name of the veteran,

(ii) The name of the claimant or appellant if other than the veteran,

(iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant,

(iv) The applicable VA file number, and

(v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement calling for payment of an amount exceeding 20 percent of past-due benefits shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of the agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420.

(h) *Payment of fees by Department of Veterans Affairs directly to an agent or attorney from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an agent or attorney may enter into a fee agreement providing that payment for the services of the agent or attorney will be made directly to the agent or attorney by VA out of any past-due benefits awarded in any proceeding before VA or the United States Court of Appeals for Veterans Claims. VA will charge and collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits awarded. The amount of such assessment shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, but in no event shall the assessment exceed $100. Such an agreement will be honored by VA only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and § 3.750 *et seq.* of this chapter.)

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the

claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, ''past-due benefits'' means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the ''past-due benefits'' will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the agent or attorney represents the claimant or appellant in that phase of the claim, the agent or attorney will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the agent or attorney, the agent's or attorney's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(iv) In cases where an award of past-due benefits is reduced by law including administrative offset to collect a debt or overpayment, VA will calculate the amount of fees to be paid to an agent or attorney based on the cash payment to the claimant or appellant after all applicable reductions.

(4) In addition to filing a copy of the fee agreement with the Office of the General Counsel as required by paragraph (g) of this section, the agent or attorney must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement.

(i) *Motion for review of fee agreement.* The Office of the General Counsel may review a fee agreement between a claimant or appellant and an agent or attorney upon its own motion or upon the motion of the claimant or appellant and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable and must be accompanied by all evidence the moving party desires to submit.

(1) A claimant's or appellant's motion for review of a fee agreement must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel's review of a fee agreement on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Assistant General Counsel shall forward the record and a recommendation to the General Counsel for a final decision. Unless either party files a notice of disagreement with the Office of the General Counsel, the agent or attorney must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the agent's or attorney's accreditation to practice before VA.

(k) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a supplemental statement of the case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Authority: 38 U.S.C. 5902, 5904, 5905)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0085)

11. Add § 14.637 to read as follows:

§ 14.637. Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the

services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before VA. Whether such an agent or attorney will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the agent or attorney and the claimant or appellant in the fee agreement filed with the Office of the General Counsel under § 14.636 of this part. Expenses are not payable directly to the agent or attorney by VA out of benefits determined to be due to a claimant or appellant.

(c) *Nature of expenses subject to reimbursement.* ''Expenses'' include nonrecurring expenses incurred directly in the prosecution of a claim for benefits on behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining the services of an expert witness or an expert opinion. ''Expenses'' do not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, and the cost of office supplies.

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of an agent or attorney may be obtained only if the expenses are reasonable. The Office of the General Counsel may review the expenses charged by an agent or attorney upon its own motion or the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable and must be accompanied by all evidence the claimant or appellant desires to submit. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, and whether travel expenses are in keeping with expenses normally incurred by other representatives.

(1) A claimant's or appellant's motion for review of expenses must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel's review of expenses on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review expenses 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. Unless either party files a notice of disagreement with the General Counsel's decision, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this part to terminate the agent's or attorney's accreditation to practice before VA.

(f) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a supplemental statement of the case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0085)

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

13. Amend newly redesignated § 1.600 by:

a. Adding an undesignated center heading before the section heading.

b. In paragraph (a) introductory text, removing ''14.640 through 14.643'' and adding, in its place, ''1.600 through 1.603''.

c. In paragraph (b)(1), removing ''14.640 through 14.643'' and adding, in its place, ''1.600 through 1.603''.

d. In paragraph (b)(4), removing ''14.640 through 14.643'' and adding, in its place, ''1.600 through 1.603''.

e. In paragraph (d) introductory text, removing ''14.640 through 14.643'' and adding, in its place, ''1.600 through 1.603''.

The revision and addition read as follows:

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

§ 1.600 Purpose.

* * * * *

§ 1.602 [Amended]

14. Amend newly redesignated § 1.602 by:

a. In paragraph (b), removing ''14.643'' and adding, in its place, ''1.603''.

b. In paragraph (c)(3), removing ''14.640 through 14.643'' and adding, in its place, ''1.600 through 1.603''.

§ 1.603 [Amended]

15. Amend newly redesignated § 1.603 by:

a. In paragraph (b)(1), removing ''14.640 through 14.643'' and adding, in its place, ''1.600 through 1.603''.

b. In paragraph (c), removing ''14.643'' and adding, in its place, ''1.603''.

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

16. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a) unless otherwise noted.

17. Amend § 19.31 by adding a paragraph (d) and revising the authority citation at the end of the section to read as follows.

§ 19.31 Supplemental statement of the case.

* * * * *

(d) *Exception.* Paragraph (b)(1) of this section does not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d); 38 U.S.C. 5902, 5903, 5904)

18. Amend § 19.36 by adding a sentence at the end of the paragraph and revising the authority citation to read as follows:

§ 19.36 Notification of certification of appeal and transfer of appellate record.

* * * Provisions in this section for submitting additional evidence and references to § 20.1304 do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105; 38 U.S.C. 5902, 5903, 5904)

19. Amend § 19.37 by adding a paragraph (c) and revising the authority citation at the end of the section to read as follows.

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

* * * * *

(c) The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d)(1), 5902, 5903, 5904)

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

20. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§§ 20.609 and 20.610 [Removed]

21. Remove §§ 20.609 and 20.610.

22. Amend § 20.800 by adding a sentence at the end of the paragraph and revising the authority citation to read as follows:

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

* * * The provisions of this section do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7105(d)(1); 38 U.S.C. 5902, 5903, 5904)

23. Amend § 20.1304 by adding a paragraph (e) and revising the authority citation at the end of the section to read as follows.

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

* * * * *

(e) *Relationship to proceedings before the General Counsel to cancel accreditation or to review the reasonableness of fees and expenses.* The provisions of paragraphs (a), (b), and (d) of this section allowing appellants to submit additional evidence do not apply in proceedings before the General Counsel conducted under part 14 of this chapter to cancel accreditation or to review fee agreements and expenses for reasonableness.

(Authority: 38 U.S.C. 7104, 7105, 7105A; 38 U.S.C. 5902, 5903, 5904)

[FR Doc. E7–8642 Filed 5–4–07; 8:45 am]

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H.R. 753/P.L. 110–20

To redesignate the Federal building located at 167 North Main Street in Memphis, Tennessee, as the ''Clifford Davis and Odell Horton Federal Building''. (May 2, 2007; 121 Stat. 86)

H.R. 1003/P.L. 110–21

To amend the Foreign Affairs Reform and Restructuring Act of 1998 to reauthorize the United States Advisory Commission on Public Diplomacy. (May 2, 2007; 121 Stat. 87)

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21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[8] Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
*40–49	(869–062–00095–2)	28.00	Apr. 1, 2007
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
*500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
*CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.