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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: February 23, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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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

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. 4 No. 57; Docket No. 7412S]

General Crop Insurance Regulations; Fresh Plum Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.146, the Fresh Plum Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on plums in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as September 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

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

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

FCIC hereby adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.146, the Fresh Plum Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring plums.

On Tuesday, November 21, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 48107, to add a new section, 7 CFR 401.146, the Fresh Plum Endorsement, to provide the provisions of crop insurance protection on plums in an endorsement to the general crop insurance policy.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 54 FR 48107 is hereby adopted as a final rule.

Since potential policyholders must be allowed to review this insurance offer in sufficient time to make a determination whether to include it in their farming plans, and since the time available for this consideration is short, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; Fresh plums.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.146, Fresh Plum Endorsement, effective fo the 1990 and succeeding crop years, to read as follows:

§ 401.146 Fresh plum endorsement.

The provisions of the Fresh Plum Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Fresh Plum Endorsement

1. *Causes of Loss.*

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Earthquake;
(3) Fire;
(4) Wildlife;
(5) Volcanic eruption;
(6) An insufficient number of chilling hours to effectively break dormancy; or
(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless these causes of loss are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured under section 1b of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard;
(2) Disease or insect infestation unless specifically caused by adverse weather;
(3) Fruit cullage caused by: green; overripe; undersize condition; and mechanical damage which causes rejection of the crop at the packing house; or
(4) Inability to market as a direct result of quarantine, boycott, or refusal of any entity

to accept or harvest production unless production has actual physical damage due to a cause specified in subsection 1.a.

2. *Insured Crop and Acreage.*

a. The crop insured will be plums grown for fresh market fruit or processing for which we provide a guarantee and premium rate:

b. In lieu of the provisions of subsection 2e of general crop insurance policy, we do not insure any plum acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the fifth growing season after being set out;

(3) Which has not produced at least 200 lugs fresh market production in the preceding crop year unless the acreage is inspected by us and approved for coverage;

(4) For which production records acceptable to us for at least the previous crop year are not provided;

(5) Which we consider not acceptable;

(6) Which is interplanted with another crop, unless we inspect such acreage and give our approval in writing;

(7) On which is grown a type or variety not established as adapted to the area; excluded by the actuarial table; or not regulated for plums by the California Tree Fruit agreement, a related crop advisory board, or the State;

(8) From which the fruit is harvested directly by the public; or

(9) If the orchard practices carried out are not in accordance with the orchard practices for which the premium rates have been established.

3. *Report of Acreage, Share, Type and Practice (Acreage Report).* The acreage report must be filed on or before January 31. You must report the crop type in addition to the information required by section 3 of the general crop insurance policy for the acreage report.

4. *Production Reporting, Coverage Level, Practices for Computing Indemnities, and Production Guarantees.*

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees;

(2) The number of trees planted per acre;

(3) Tree damage or use of production practices which has or may reduce the yield from previous levels; and

(4) If the number of bearing trees (fifth growing season and older) is reduced more than 10% from the preceding calendar year (In such event, the production guarantee will be reduced 1 percent, through adjustment to your average yield for each 1 percent reduction in excess of 10 percent).

b. You may select only one coverage level and price election for plums for the crop year.

5. *Annual Premium.* The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. *Insurance Period.* In lieu of the provisions in section 7 of the general crop insurance policy, coverage begins for each crop year on February 1, following our inspection and determination of acceptability. Insurance ends on each area at least one acre in size at the earliest of:

a. Total destruction of the insured crop;

b. Harvest;

c. The date harvest would normally start;

d. Final adjustment of a loss; or

e. September 30 of the crop year.

7. *Units.* Plum acreage grown on non-contiguous land that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if, for each proposed unit, you maintain written, verifiable records of acreage and harvested production for at least the previous crop year.

If you have a loss on any unit, production records for all harvested units must be maintained and be made available to us at our request. Production that is commingled between optional units will cause those units to be combined.

8. *Notice of Damage or Loss.* In lieu of the notices required in section 8.a.(2), (3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within 72 hours of the date of damage and indicate the causes of damage and whether a claim for indemnity is probable. Notwithstanding the previous sentence, if damage occurs within 72 hours of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If notice is given under the first sentence of this paragraph, we must be notified of the time of harvest at least 72 hours before harvest begins.

9. *Claim for Indemnity.* In addition to section 9 of the general crop insurance policy:

a. The indemnity will be determined separately for each unit of plums by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of plums to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by the insured share.

b. The total production (standard lug equivalent) (see section 12.d.) to be counted for a unit will include all production harvested, and all appraised production. Such production must meet U.S. #1 standards as modified (before the date insurance attaches) by the latest California Tree Fruit Agreement Publication for fresh plums.

(1) Mature production of fresh plums damaged by insurable causes within the insurance period that could be marketed for any use other than fresh packed plums, will be determined by multiplying the number of tons that could be marketed by the value per ton of fruit or $50.00 per ton, whichever is greater, and dividing that result by the highest price election available for the type. This result will be the number of standard lug equivalents to be considered as production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the applicable guarantee for any acreage which is abandoned, destroyed by you without our prior written consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of plums becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested plums may be determined on the basis of orchard appraisals conducted after the end of the insurance period or discontinuance of harvest. We may appraise and consider as production to count, any insured fruit remaining on acreage not clean harvested.

(5) We may delay final appraisal until the extent of damage can be determined.

c. In the absence of acceptable records to determine the disposition of harvested plums, we may elect to determine such disposition and the amount of such production to be counted for the unit.

d. You must authorize us in writing to examine and obtain any records pertaining to production and marketing of any plums, whether insured or uninsured, whether this crop year or prior crop years, from the broker, shipper, advisory board, marketing order or any other source we deem necessary.

10. *Cancellation and Termination Dates.* The cancellation and termination dates are January 31.

11. *Contract Changes.* The date by which contract changes will be available in your service office is October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

12. *Meaning of Terms.* For the purpose of Plum crop insurance:

a. "*Appraisal*" means an estimate of the potential production determined by our representative using our prescribed procedures.

b. "*Crop Year*" means the period beginning with the date insurance attaches and extending through the normal harvest time, and will be designated by the calendar year in which the insured plums are normally harvested.

c. "*Harvest*" means the picking of mature plums from the trees by hand or machine.

d. "*Lug*" means a packed container of fresh plums weighing 28 pounds. All fresh production to count of varying lug sizes will be converted to standard lug equivalents on the basis of 28 pounds of packed plums.

Done in Washington, DC on February 2, 1990.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-2987 Filed 2-7-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-90-121]

Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1990 fiscal year (January through December) established for that order. This action is needed for the California Olive Committee (committee) to incur operating expenses during the 1990 fiscal year and to collect funds during that year to pay those expenses. This action will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530-S, Washington, DC 20090-6456, telephone: (202) 475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 (7 CFR 932) regulating the handling of olives grown in California. 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.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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

There are approximately seven handlers of California olives regulated under this marketing order each season, and approximately 1,390 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 12, 1989, and unanimously recommended 1990 fiscal year expenditures of $2,067,940 and an assessement of $20.68 per ton of assessable olives received by handlers under M.O. 932. In comparison, 1989 fiscal year budgeted expenditures were $1,902,322 and the assessment rate was $25.39 per ton.

Major expenditure items budgeted for the 1990 fiscal year compared with those budgeted in 1989 (in parentheses) are $337,540 ($469,540) for program administration, $8,650 ($0) for capital equipment purchases, $94,500 ($79,032) for production research, $790,000 ($760,000) for consumer advertising, $667,000 ($398,500) for food service advertising, $152,250 ($195,250) for public relations and $18,000 ($0) for miscellaneous promotional expenditures. The committee has reallocated expenditures which can be directly attributed to marketing from its administrative budget to its marketing budget. This accounts for the substantial difference between 1989 and 1990 fiscal year budgeted expenditures in the program administration and food service advertising budget categories. The $165,618 increase in budgeted expenditures from 1989 is mainly attributed to an increased emphasis to be placed on food service industry promotional programs with the food service industry.

Estimated assessment income of $2,068,000 for the 1990 fiscal period, based on handler receipts of 100,000 tons of assessable olives, will be utilized to cover the anticipated expenses. Last year's assessment income was approximately $1,900,000 based on the receipts of 73,000 assessable tons. The committee also unanimously recommended that excess income from 1989 fiscal year ($22,807) be placed in its reserve, resulting in a reserve well within the maximum amount authorized under the order.

Notice of this action was published in the January 9, 1990, issue of the **Federal Register** (55 FR 737). The comment period ended January 19, 1990. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

The budget and assessment rate approvals for the olive program should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 932

California, Marketing agreements Olives.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 932.224, is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 932.224 Expenses and assessment rate.

Expenses of $2,067,940 by the California Olive Committee are authorized, and an assessment rate of $20.68 per ton of assessable olives is established, for the fiscal year ending on December 31, 1990. Unexpended funds from the 1989 fiscal year may be carried over as a reserve.

Dated: February 5, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–2959 Filed 2–7–90; 8:45 am]

BILLING CODDE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities loan and grant servicing regulations. This action is being taken to clarify various sections of the regulation. The intended effect of issuance is to provide more comprehensive and straightforward guidance to FmHA staff and recipients of assistance relating to the servicing of the affected loans and grants.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to be to provide better service to rural communities.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, and 7 CFR part 1940, subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Comments

FmHA published a proposed rule in the **Federal Register** on March 6, 1989, (54 FR 9217) inviting comments until April 5, 1989. No comments were received from the public relating to revision of the regulation.

Based on further internal review following the proposed rule publication, it was concluded that it would be desirable to make certain minor additions or editorial clarifications and to reorganize the test so that items covered would appear in a more logical sequence and/or be identified as a separate action in the table of contents. Since the version published as a proposed rule did not provide any reserved sections to allow additions in the future, the final version also provides such sections.

While most changes made are the result of the above, certain substantive changes were made. However, all of these are considered to be of an administrative nature and have no impact on the public. The changes made are as follows:

1. A paragraph was added as § 1951.213 to indicate that debt settlement actions for loans covered under the subpart are to be handled under subpart C of part 1956. This represents no change in applicability of those procedures.

2. Section 1951.220(b) governing loan summary statements has been changed to reflect changes published in November 1988 and not reflected in the proposed rule.

3. Section 1951.221(a)(1) has been revised to include Insured Business and Industry loans.

4. Sections 1951.226 and 1951.230 have been revised to refer to FmHA Instruction 1956–C for debt settlement actions, and require only that the FmHA Administrator grant approval for a release from liability, rather than actually execute the form used to effect the release.

5. Sections 1951.223(c)(1), 1951.230(c)(1) and (2), and 1951.230(d)(3) have been changed to indicate that interest charged will be in accordance with the rate reflected in current Finance Office records to account for changes made to comply with Pub. L. 99–88 and Pub. L. 100–233.

6. Section 1951.230(c)(3) has been changed to include additional requirements which apply in order for loans to be combined in connection with a transfer.

7. Section 1951.215, which covers servicing of grants, has been modified to include references to 7 CFR 3016 and 3017 as well as 7 CFR 3015.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart E of part 1951 is revised to read as follows:

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

Sec.

1951.201 Purpose.
1951.202 Objectives.
1951.203 Definitions.
1951.204 Nondiscrimination.
1951.205 Redelegation of authority.
1951.206 Forms.
1951.207 State supplements.
1951.208–1951.209 [Reserved]
1951.210 Environmental requirements.
1951.211 Refinancing requirements.
1951.212 Unauthorized financial assistance.
1951.213 Debt settlement.
1951.214 Care, management, and disposal of acquired property.
1951.215 Grants.
1951.216 Nonprogram (NP) loans.
1951.217 Public bodies.
1951.218–1951.219 [Reserved]
1951.220 General servicing actions.
1951.221 Collections, payments, and refunds.
1951.222 Subordination of security.
1951.223 Reamortization.
1951.224 Third party agreements.
1951.225 Liquidation of security.
1951.226 Sale or exchange of security property.
1951.227 Protective advances.
1951.228–1951.229 [Reserved]
1951.230 Transfer of security and assumption of loans.
1951.231 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.
1951.232 Water and waste disposal systems which have become part of an urban area.
1951.233–1951.239 [Reserved]
1951.240 State Director's additional authorizations and guidance.
1951.241 Special provision for interest rate change.
1951.242–1951.249 [Reserved]
1951.250 OMB control number.
Exhibits: (available in any FmHA office)
Exhibit A—Report on Servicing Action
Exhibit B—Agreement for New Member (With or Without Withdrawing Member)
Exhibit C—Agreement for Withdrawal of Member (Without New Member)
Exhibit D—Items to be Included in Transfer and Assumption Dockets (if applicable)
Exhibit E—Interest Rate Requirements and Effective Dates
Exhibit F—Instruction to FmHA Personnel to Implement Public Law 100–233
Exhibit G—Letter to Borrower Notifying of Choice of Interest Rate
Exhibit H—Rescheduling Agreement—Public Bodies

PART 1951—SERVICING AND COLLECTIONS

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

§ 1951.201 Purpose.

This subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Industrial Development grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; and Water and Waste Disposal Technical Assistance and Training grants. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

§ 1951.202 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect FmHA's financial interest. Supervision by FmHA includes, but is not limited to, review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging for, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews.

§ 1951.203 Definitions.

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA office).

(b) *Assumption of debt.* The agreement by one party to legally bind itself to pay the debt incurred by another.

(c) *CONACT.* The Consolidated Farm and Rural Development Act, as amended.

(d) *Eligible applicant.* An entity that would be legally qualified for financial assistance under the loan or grant program involved in the servicing action.

(e) *Ineligible applicant.* An entity or individual that would not be considered eligible for financial assistance under the loan or grant program involved in the servicing action.

(f) *Nonprogram (NP) loan.* An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions or sale of inventory property; any recipient in cases of unauthorized assistance; or a recipient whose legal organization has changed as set forth in § 1951.220(e) of this subpart resulting in the borrower being ineligible for program benefits.

(g) *Servicing office.* The State, District, or County Office responsible for immediate servicing functions for the borrower or grantee.

(h) *Transfer fee.* A one-time nonrefundable application fee, charged to ineligible applicants for FmHA services rendered in the processing of a transfer and assumption.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, or other servicing action under this subpart will contain the following covenant.

The property described herein was obtained or improved with Federal financial assistance and is subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later.

§ 1951.205 Redelegation of authority.

Servicing functions under this subpart which are specifically assigned to the State Director may be redelegated in writing to an appropriate sufficiently trained designee.

§ 1951.206 Forms.

Forms utilized for actions under this subpart are to be modified appropriately where necessary to adapt the forms for use by corporate recipients rather than individuals.

§ 1951.207 State supplements.

State supplements developed to carry out the provisions of this subpart will be

prepared in accordance with subpart B of part 2006 of this chapter (available in any FmHA office) and applicable State laws and regulations. State supplements are to be used only when required by National Instructions or necessary to clarify the impact of State laws or regulations, and not to restate the provisions of National Instructions. Advice and guidance will be obtained as needed from the Office of the General Counsel (OGC).

§§ 1951.208–1951.209 [Reserved]

§ 1951.210 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with subpart G of part 1940 of this chapter. The appropriate environmental review will be completed prior to approval of the servicing action. When National Office approval is required, the completed environmental review will be included with other information submitted.

§ 1951.211 Refinancing requirements.

In accordance with the CONACT, FmHA requires for most loans covered by this subpart that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan. Applicable requirements are set forth in subpart F of part 1951 of this chapter.

§ 1951.212 Unauthorized financial assistance.

Subpart O of Part 1951 of this chapter prescribes policies for servicing the loans and grants covered under this subpart when it is determined that a borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy, or any other direct financial assistance.

§ 1951.213 Debt settlement.

Subpart C of part 1956 of this chapter prescribes policies and procedures for debt settlement actions for loans covered under this subpart when it is determined that a debt is eligible for settlement except as provided in §§ 1951.216 and 1951. 231.

§ 1951.214 Care, management, and disposal of acquired property.

Property acquired by FmHA will be handled according to subparts B and C of part 1955 of this chapter.

§ 1951.215 Grants.

No monitoring action by FmHA is required after grant closeout. Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, and FmHA accepts final expenditure information. However, grantees remain responsible in accordance with the terms of the grant for property acquired with grant funds.

(a) *Applicability of requirements.* Servicing actions relating to FmHA grants are governed by the provisions of this subpart, the terms of the Grant Agreement and, if applicable, the provisions of 7 CFR 3015, 3016, and 3017.

(1) Servicing actions will be carried out in accordance with the terms of Form FmHA 442–31 or 1942–31, "Association Water or Sewer System Grant Agreement." Grant agreements with a revision date on or after January 29, 1979, require that the grantee request disposition instructions from FmHA before disposing of property which is no longer needed for original grant purposes.

(2) When facilities financed in part by FmHA grants are transferred or sold, repayment of all or a portion of the grant is not required if the facility will be used for the same purposes and the new owner provides a written agreement to abide by the terms of the grant agreement.

(3) 7 CFR 3015 first became effective on November 10, 1981; 7 CFR 3016 on October 1, 1988; and 7 CFR 3017 on March 18, 1989. Grants made on or after those dates are subject to the provisions of those regulations except to the extent of the express provisions of the Grant Agreement.

(b) *Authorities.* Subject to the requirements of § 1951.215(a), authority to approve servicing actions is as follows:

(1) For water and waste disposal grants, the State Director is authorized to approve any servicing actions needed, except that prior approval of the Administrator is required when property acquired with grant funds is disposed of in accordance with §§ 1951.226, 1951.230, or 1951.232 of this subpart and the buyer or transferee refuses to assume all terms of the grant agreement.

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.

§ 1951.216 Nonprogram (NP) loans.

Borrowers with NP loans are not eligible for any program benefits, including appeal rights. However, FmHA may use any servicing tool under this subpart necessary to protect the Government's security interest, including reamortization or rescheduling. The refinancing requirements of subpart F of part 1951 of this chapter do not apply to NP loans. Debt settlement actions relating to NP loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval. Any exception to the servicing requirements of NP loans under this subpart must have prior concurrence of the National Office.

§ 1951.217 Public bodies.

Servicing actions involving public bodies will be carried out to the extent feasible according to the provisions of this subpart. With prior National Office approval, the State Director is authorized to vary from such provisions if necessary and approved by OGC, provided such variation will not violate other regulatory or statutory provisions. To request approval, the case file, including copies of applicable documents, recommendations, and OGC comments, will be forwarded to the Administrator, Attention: (appropriate program division).

§§ 1951.218–1951.219 [Reserved]

§ 1951.220 General servicing actions.

(a) *Payment in full.* Payment in full of a loan is handled according to part 1866 of this chapter (FmHA Instruction 451.4). When a loan is paid in full, the servicing official will:

(1) Notify the company providing fidelity bond coverage in writing that the government no longer has an interest in the bond if the government is named co-obligee on the bond.

(2) Release FmHA's interest in insurance policies according to applicable provisions of subpart A of part 1806 (FmHA Instruction 426.1).

(3) Release FmHA's interest in any other security as appropriate, consulting with OGC if necessary.

(b) *Loan summary statements.* Upon request of a borrower, FmHA will issue a loan summary statement showing account activity for each loan made or insured under the CONACT. Field offices will post a notice on the bulletin board informing borrowers of the availability of loan summary

statements. See exhibit A of subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards to field offices a copy of Form FmHA 1951–9, "Annual Statement of Loan Account," to be retained in borrower files as a permanent record of account activity for the year.

(2) Quarterly Forms FmHA 1951–9 are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) The servicing office will provide a copy of the applicable loan summary statement to the borrower on request. A copy of Form FmHA 1951–9 and, for loans with unamortized installments, a printout of future installments owed obtained using the borrower status screen option in the Automated Discrepancy Processing System (ADPS), will constitute the loan summary statement to be provided to the borrower.

(c) *Insurance.* FmHA borrowers shall maintain insurance coverage as follows:

(1) Community and Insured Business Programs borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of subpart A of part 1942 of this chapter. Insurance coverage must be monitored in accordance with the above-referenced section to determine that adequate policies and bonds are in force.

(2) For all other types of loans covered by this subpart, property insurance will be serviced according to subpart A of part 1806 of this chapter (FmHA Instruction 426.1) in real estate mortgage cases, and according to the loan agreement in other cases.

(d) *Property taxes.* Real property taxes are serviced according to part 1863 of this chapter (FmHA Instruction 425.1). If State statutes permit a personal property tax lien to have priority over FmHA's lien, such taxes are serviced according to § 1863.3 and § 1863.4 (paragraphs III and IV) of FmHA Instruction 425.1.

(e) *Changes in borrower's legal organization.* (1) The State Director may approve, with OGC's concurrence, changes in a recipient's legal organization, including revisions of articles of incorporation or charter and bylaws, when:

(i) The change does not provide for a sole member type of organization;

(ii) The borrower retains control over its assets and the operation, management, and maintenance of the facility, and continues to carry out its responsibilities as set forth in § 1942.17(b)(3) of subpart A of part 1942 of this chapter; and

(iii) The borrower retains significant local ties with the rural community.

(2) The State Director may approve, with prior concurrence of the Administrator, changes in a recipient's legal organization which result in a sole member type of organization, or any other change which results in a recipient's loss of control over its assets and/or the operation, management and maintenance of the facility, provided all of the following have been or will be met:

(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a nonprogram loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any FmHA office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(f) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members of the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by FmHA as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect FmHA's interest. Servicing actions necessary due to such provisions will be noted on Form FmHA 1905–10, "Management System Card—Association."

(g) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA, and in compliance with any special servicing actions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted on Form FmHA 1905–10.

(h) *Correcting errors in security instruments.* Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice, that the property was included due to mutual error.

(i) *Present market value determination.* For purposes of this subpart, the value of security is determined by the approval official as follows:

(1) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(2) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(3) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of Subpart A of Part 1942 of this chapter. The appraisal will be completed by a qualified FmHA employee or an independent appraiser as determined appropriate by the approval official.

§ 1951.221 Collections, payments and refunds.

Collections are processed in accordance with Subpart B of Part 1951 of this chapter. Payments and refunds are handled in accordance with the following:

(a) *Community and Insured Business Programs.* (1) Field offices can obtain data on principal installments due for Community and Insured Business Programs loans with unamortized installments using the borrower status screen option in the ADPS.

(2) Regular payments for Community and Insured Business Programs

borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA's security.

(i) Distribution of such payments is made as follows:

(A) First, to the FmHA loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(2)(i)(B) and (C) of this section.

(B) Second, to the FmHA loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(2)(i)(C) of this section.

(C) Third, as advance payments on FmHA loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) Unless otherwise established by the debt instrument, regular payments will be applied as follows:

(A) For amortized loans, first to interest accrued (as of the date of receipt of the payment), and then to principal.

(B) For principal-plus-interest loans, first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(3) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in § 1806.5(b) of subpart A of part 1806 (paragraph V B of FmHA Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) *Grazing Association Loans. Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* (1) Regular payments for such loans are defined in § 1951.8(a) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in § 1951.8(b) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(b) of that subpart.

§ 1951.222 Subordination of security.

When a borrower requests FmHA to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) *General.* The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the FmHA indebtedness, and the amount must be within the approval official's authority as set forth in exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA office).

(2) It must be determined that the borrower cannot refinance its FmHA debt in accordance with subpart F of part 1951 of this chapter.

(3) The transaction will further the purposes for which the FmHA loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA debt being adequately secured.

(4) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(5) Any proposed development work will be planned and performed according to § 1942.18 of subpart A of part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(6) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(7) In cases involving land purchase, the FmHA will obtain a mortgage on the purchased land.

(8) When the transaction involves more than $10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(9) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA loan assistance.

(10) Necessary consent and subordination of all other outstanding security interests must be obtained.

(11) For Indian Tribes and Tribal Corporations, loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in exhibit M of subpart G of part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(b) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under subpart A of part 1901 of this chapter.

(c) *Processing.* The case file is to include:

(1) The borrower's written request on Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(2) Current balance sheet;

(3) If development work is involved, an operating budget on Form FmHA 442–7, "Operating Budget," or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form FmHA 442–2, "Statement of Budget, Income, and Equity," schedules 1 and 2, or similar form;

(4) Copy of proposed security instrument;

(5) Appraisal report, when applicable;

(6) OGC opinion on the request;

(7) Exhibit A of this subpart (available in any FmHA office), appropriately completed;

(8) Appropriate environmental review; and

(9) Any other necessary supporting information.

(d) *Closing.* All requests for subordination will be closed according to instructions from OGC except those which affect only chattel liens other than pledges of revenue. FmHA's consent on Form FmHA 465–1 will be signed concurrently with Form FmHA 460–2, "Subordination by the Government," when applicable.

§ 1951.223 Reamortization.

(a) *State Director authorization.* The State Director is authorized to approve reamortization of loans under the following conditions:

(1) The account is delinquent and cannot be brought current within one year while maintaining a reasonable reserve;

(2) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule;

(3) The amount being reamortized is within the State Director's loan approval authorization; and

(4) There is no extension of the final maturity date.

(b) *Requests requiring National Office approval.* Reamortizations not meeting the above conditions require prior National Office approval. Requests will be forwarded to the National Office with the case file, including:

(1) Current budget and cash flow prepared on Form FmHA 442–2, schedules 1 and 2, or similar form;

(2) Current balance sheet and income statement;

(3) Exhibit A of this subpart, appropriately completed;

(4) Form FmHA 451–33, "Reamortization Request," completed in accordance with § 1951.223(c)(3) of this subpart, when applicable; and

(5) Any other necessary supporting information.

(c) *Processing.* When legally permissible and administratively acceptable, the total outstanding principal and interest balances will be reamortized rather than only the delinquent amount. Accrued interest will be at the rate currently reflected in Finance Office records.

(1) Reamortizations will be perfected in accordance with OGC closing instructions.

(2) When debt instruments are being modified or new debt instruments executed, bond counsel or local counsel, as appropriate, must provide an opinion indicating any effect on FmHA's security position. The FmHA approval official must determine that the government's interest will remain adequately protected if the security position will be affected.

(3) *Notes.* Except as provided in § 1951.223(c)(4), loans evidenced by notes will be reamortized through a new evidence of debt unless OGC recommends that the terms of the existing document be modified. Form FmHA 451–33 may be used to effect such modifications, if legally adequate, or other forms may be used if acceptable to FmHA. The original of a new note or any endorsement required by OGC is to be attached to the existing note, filed in the servicing office, and retained until the account is paid in full or otherwise satisfied. A copy will be forwarded to the Finance Office.

(4) *Bonds and notes with other than real or chattel security pledged to FmHA.* Loans evidenced by bonds, or by notes with other than real or chattel security pledged to FmHA, may be reamortized using procedures acceptable to the State Director and legally permissible under State statutes in the opinion of the borrower's counsel and the OGC.

(i) The procedure may consist of a new debt instrument or agreement for the total FmHA indebtedness, including the delinquency, or a new instrument or agreement whereby the borrower agrees to repay the delinquency plus interest. If a new instrument or agreement for only the delinquent amount is used, a new loan number will be assigned to the delinquent amount, and the borrower will be required to pay the amounts due under both the original and the new instruments.

(ii) When a delinquent or problem loan cannot be reamortized by issuing a new debt instrument due to State statutes, or the cost of preparation and closing is prohibitive, the rescheduling agreement provided as Exhibit H of this subpart (available in any FmHA office), may be used.

(iii) Section 1942.19 of subpart A of part 1942 of this chapter applies to any new bonds issued unless precluded by State statutes or an exception is approved by the National Office.

(iv) If State statutes do not require the release of existing bonds, they will be retained with the new bond instrument or agreement in the FmHA office authorized to store such documents. If State statutes require release of existing bonds, the exchange will be accomplished by the District Director, and the new bond and/or agreement will be retained in the appropriate office.

(5) *New debt instruments or agreements.* (i) A copy will be sent to the Finance Office after execution, except that if serial bonds are used, the original bond(s) will be submitted to the Finance Office.

(ii) Any agreement used will contain:

(A) The amount delinquent, which must equal the total delinquency on the account and net advances (the unpaid principal on any advance and the accrued interest on any advance through the date of reamortization, less interest payments credited on the advance account);

(B) The effective date of the reamortization;

(C) The number of years over which the delinquency will be amortized;

(D) The repayment schedule; and

(E) The interest rate.

(iii) A payment will be due on the next scheduled due date. Deferment of interest and/or principal payments is not authorized.

(iv) A separate new instrument will be required for each loan being reamortized.

(v) If amortized payments are not used, the schedule of principal installments developed will be such that combined payments of principal and interest closely approximate an amortized payment.

§ 1951.224 Third party agreements.

The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(a) *Leases*—(1) *Lease of all or part of a facility (except when liquidation action is pending).* The State Director may consent to the leasing of all or a portion of security property when:

(i) Leasing is the only feasible way to provide the service and is the customary practice as required under § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter;

(ii) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for its continued availability and use at reasonable rates and terms as required under § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility;

(iii) The lease agreement contains provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from FmHA;

(iv) The lease document contains nondiscrimination requirements as set forth in § 1951.204 of this subpart;

(v) The lease contains a provision which recognizes that FmHA is a lienholder on the subject facility and, as such, the lease is subordinate to the rights and claims of FmHA as lienholder; and

(vi) The lease does not constitute a lease/purchase arrangement, unless permitted under § 1951.232 of this subpart.

(2) *Lease of all or part of a facility (pending liquidation action).* The State Director may consent to the leasing of all or a portion of security property when:

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(ii) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;

(iii) Leasing is not an alternative to, or means of delaying, liquidation action;

(iv) The lease and use of any proceeds from the lease will further the objective of the loan;

(v) Rental income is assigned to FmHA in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured;

(vi) The lease is advantageous to the borrower and is not disadvantageous to the Government;

(vii) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence; and

(viii) The lease does not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(b) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

(1) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to FmHA or the prior lienholder by the use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or other appropriate instrument;

(2) Royalty payments are adequate and are assigned to FmHA on Form FmHA 443–16 in an amount determined by the State Director to be adequate to protect the Government's interest;

(3) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 443–16 if needed for protection of the Government's interest;

(4) The lease, subordination, or consent form is acceptable to OGC;

(5) The lease will not interfere with the purpose for which the loan or grant was made; and

(6) When FmHA consent is required, the borrower submits a completed Form FmHA 465–1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(c) *Management agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of part 1942, subpart A of this chapter (available in any FmHA office).

(d) *Affiliation agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in § 1942.17(b)(3) of subpart A of part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(e) *Processing.* The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

(1) A copy of the proposed agreement;

(2) Exhibit A of this subpart (available in any FmHA office), appropriately completed;

(3) Any other necessary supporting information.

§ 1951.225 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart (available in any FmHA office), and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to subpart A of part 1955 of this chapter.

§ 1951.226 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities.* (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale; one or more members of the borrower's organization proposes to purchase the property; it is proposed to sell the property for less than the appraised value; or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General.* Approval may be given when the approval official determines and documents that:

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

(i) Execute Form FmHA 400–4, "Assurance Agreement." The covenants

involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to FmHA a written agreement assuming all rights and obligations of the original grantee if grant funds were provided. See § 1951.215 below for additional guidance on grant agreements.

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on FmHA debts according to § 1951.221 of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to FmHA's advantage.

(ii) To purchase or acquire through exchange property more suited to the borrower's needs, if the FmHA debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with FmHA grant funds will be handled in accordance with the grant agreement.

(c) *Processing.* (1) The case file will contain the following:

(i) Except for actions approved by the District Director, Exhibit A of this subpart (available in any FmHA office), appropriately completed;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form FmHA 1965–8, "Release from Personal Liability," including the County Committee memorandum and the State Director's recommendations;

(v) An executed Form FmHA 400–4, if applicable;

(vi) An executed Form FmHA 465–1, if applicable;

(vii) Form FmHA 460–4, "Satisfaction," if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC; and

(viii) Written approval of the Administrator when required under § 1951.226(a)(3) of this subpart;

(2) *Releasing security.* (i) The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.226(b) of this subpart and § 1962.17 and § 1962.27 of Subpart A of Part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA 460–1, "Partial Release," or Form FmHA 462–12, "Statements of Continuation, Partial Release, Assignment, Etc."

(ii) Subject to § 1951.226(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA 465–1. Partial release of real estate security may be made by use of Form FmHA 460–1 or other form approved by OGC.

(3) FmHA liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) *Release from liability.* (1) When an FmHA debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA 1965–8.

(2) When sale proceeds are not sufficient to pay the FmHA debt in full, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in Subpart C of Part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA 1965–8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liabilty upon the completion of the sale.

§ 1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA if the debt instrument provides that FmHA may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in FmHA Instructions 2024–A and 2024–P (available in any FmHA office).

§§ 1951.228–1951.229 [Reserved]

§ 1951.230 Transfer of security and assumption of loans.

(a) *General.* It is FmHA policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA's security position or the FmHA program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) FmHA concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form FmHA 400–4 to continue nondiscrimination covenants and provide to FmHA a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full account of the FmHA debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA debt will be paid.

(9) Transferees must have the ability to pay the FmHA debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balanced sheet using Form FmHA 442–3, "Balance Sheet," and budget and cash flow information using Form FmHA 442–2, or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will not necessarily go out of existence and the transferee will not always take all assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with § 1951.220(i) of this subpart when the full debt is not being assumed.

(12) There must be no lien, judgment, or similar claims of other parties against the FmHA security being transferred unless the transferee is willing to accept such claims and the FmHA approval official determines that they will not prevent the transferee from repaying the FmHA debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(b) *Authorities.* The State Director is authorized to approve transfers and assumptions of FmHA loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

(1) Proposals which will involve a loss to the Government;

(2) Proposals involving a transfer to one or more members of the present borrower's organization;

(3) Proposals involving rates and terms which are more liberal than those set forth in § 1951.230(c) of this subpart;

(4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;

(5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part with FmHA grant funds;

(6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years; and

(7) For Indian Tribes and Tribal Corporations, the requirements found in exhibit M of subpart G of part 1940 of this chapter are not met.

(c) *Eligible applicants.* Except as noted in § 1951.230(b) of this subpart, the State Director is authorized to approve transfers of security property to and assumptions of FmHA debts by transferees who would be eligible for financial assistance under the loan program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisfied.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form FmHA 1951–15, "Community Programs Assumption Agreement," will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. Interest will accrue at the rate currently reflected in Finance Office records.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Director and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate currently reflected in Finance Office records. Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, § 1942.19(h)(11) will govern the preparation of any new debt instruments required.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any development funds remaining in a supervised bank account which are not to be refunded to FmHA will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) *Ineligible applicants.* Except as noted in § 1951.230(b) of this subpart, the State Director is authorized to approve transfer and assumptions to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. However, the State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in § 1951.230(b). Such transfers are considered only when an eligible transferee is not available or when the recovery to FmHA from a transfer to an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providing a source of easy credit for purchasers.

(1) Ineligible applicants must pay a one-time nonrefundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by non-FmHA personnel will be handled in accordance with FmHA Instruction 2024–P (available in any FmHA office), and will be added to the basic fee.

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer

fees on Form FmHA 451–2, "Schedule of Remittances," and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she will request prior approval by submitting the transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to FmHA and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified for the note in current Finance Office records or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as an NP loan and serviced in accordance with § 1951.216 of this subpart.

(5) Form FmHA 465–5, "Transfer of Real Estate Security," will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) *Release from liability.* Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability by use of Form FmHA 1965–8.

(2) If less than the full amount of the debt is assumed, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA 1965–8 and obtaining from the County Committee a memorandum recommending the release which contains the statement set forth in § 1951.226(d)(2)(ii) of this subpart.

(f) *Processing.* Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with FmHA Instruction 2033–A (available in any FmHA office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any FmHA office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will be issued, and the transferee will be required to execute Form FmHA 442–46, "Letter of Intent to Meet Conditions," prior to the closing of the transfer.

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form FmHA 1951–15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by FmHA and OGC.

(6) Accrued interest to be entered in either Table 1 of Form FmHA 1951–15 or other appropriate assumption agreement is to be obtained using the status screen option in ADPS.

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form FmHA 1951–15 or other appropriate assumption agreement;

(ii) A conformed copy of Form FmHA 1965–8.

(8) If an FmHA grant was made in conjunction with the loan being transferred, the transferee must agree in writing to assume all rights and obligations of the original grantee. See § 1951.215 for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(10) *Rates and terms.* (i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form FmHA 1951–15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A of this subpart (available in any FmHA office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

(15) The District Director must review Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant and included in the file.

§ 1951.231 Special provisions applicable to Economic Opportunity (EO) Cooperative Loans.

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect collection of the loan. The servicing office will submit to the State Office the borrow case file and the following:

(i) Form FmHA 1951–15 executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440–2, "County Committee Certification or Recommendation;"

(vi) Exhibit B of this subpart, "Agreement for New Member (With or Without Withdrawing Member)," (available in any FmHA office), executed by the remaining members of the association, the proposed new member, and the withdrawing member; and

(vii) Form FmHA 450–12, "Bill of Sale (Transfer by Withdrawing Member)," executed by the withdrawing member.

(2) If the State Director determines after review of the above information that the proposed new member is eligible and the transfer is justified, the State Director may approve the transfer and assumption by executing Form FmHA 1951–15.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability using Form FmHA 1965–8.

(4) If Finance Office records must be changed due to changes in borrower name, address and/or case number, necessary documents, including Form FmHA 1951–15 and, if applicable, Form FmHA 1965–8, will be forwarded to the Finance Office immediately with a memorandum indicating that the purpose of the submission is only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives when new member not available.* Withdrawal of a member who no longer utilizes the services of an association may be permitted even though a new member is not available, provided:

(1) The State Director determines that the remaining members have sufficient need for the property, and that the withdrawal of the member will not adversely affect collection of the loan; and

(2) The remaining members obtain from the outgoing member an agreement conveying his or her interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA as well as any other debts. Exhibit C of this subpart, "Agreement for Withdrawal of Member (Without New Member)," (available in any FmHA office), may be used by the cooperative. FmHA will not be a party to the agreement.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The servicing office will submit to the State Office the case file and items (i) through (vi) of § 1951.231(a)(1).

(3) If the State Director determines after the review of the above information that the proposed new member is eligible and the transaction is justified, the State Director may approve the transaction by executing Form FmHA 1951–15.

(4) Form FmHA 1951–15 will be forwarded immediatly to the Finance Office with a memorandum indicating that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Form FmHA 442–24, "Operating Agreement," (now obsolete) was executed by recipients of these loans. Paragraph 10 of that form provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association if the sale is necessary to pay debts of the estate.

(1) If the heirs or personal representative do not wish to continue membership in the association, the remaining members may be permitted to continue to operate the property if FmHA's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA as well as any other debts of the cooperative.

(2) The requirement of § 1962.46(h) of subpart A of part 1962 will also be followed.

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect its own interest in condemnation, trespass, quiet title, and other cases affecting the security. The servicing office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the case file.

(f) *Debt Settlement.* Debt settlement actions for Economic Opportunity Cooperative loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval.

§ 1951.232 Water and waste disposal systems which have become part of an urban area.

A water and/or waste disposal system serving an area which was formerly a rural area as defined in § 1942.17(b) of Subpart A of Part 1942 of this chapter, but which has become in its entirety part of an urban area, will be serviced in accordance with this section.

(a) *Curtailment or limitation of service.* Service may not be curtailed or limited by the inclusion of a system within an urban area.

(b) *Sale or transfer and assumption.* (1) The urban community or another entity may purchase the facility involved and immediately pay the FmHA debt in full; or

(2) The urban community or another entity may accept a transfer of the FmHA debt on an ineligible applicant basis.

(3) When a grant is involved, the entity will agree in writing to assume all rights and obligations of the original grantee. See § 1951.215 for additional guidance on grant agreements.

(c) *Lease-purchase arrangement.* If § 1951.232(b) (1) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The FmHA borrower will:

(i) Meet its debt service and reserve account requirements to FmHA;

(ii) Retain its corporate existence until FmHA has been paid in full; and

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the FmHA debt has been paid in full.

(d) *Processing.* (1) Sale of a borrower's assets will be handled in accordance with § 1951.226 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with § 1951.230 of this subpart.

(3) Lease-operation-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any FmHA office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

§§ 1951.233–1951.239 [Reserved]

§ 1951.240 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or imparing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable FmHA instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(6) Release properties being sold by the borrower from mortgages securing Rural Renewal loans if the amount of the notes and mortgages given by the purchaser to the borrower equal the present market value and are assigned and pledged to FmHA, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(7) Approve requests for rights-of-way and easements and any subordination necessary in connection with such requests.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) *Defeasance of FmHA indebtedness.* Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of FmHA debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by subpart F of part 1951 of this chapter.

§ 1951.241 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99–88 provides that any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart O of this part (available in any FmHA office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any FmHA office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify FmHA within 90 calendar days of the date of FmHA notification indicating their election to retain the rate in effect at loan approval or to change the rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90-day period, FmHA will not consider a future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible for assuring that the official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower.

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already applied to the account(s) will be reversed and reapplied by FmHA utilizing the changed interest rate. The balance remaining after the completion of the reversal and reapplication procedures will be applied first to any delinquency on the account and then to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.241(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the borrower unless the borrower is delinquent on another

FmHA loan of the same type. In those cases the amount will be applied to the delinquent amount owed, with any balance refunded to the borrower.

(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with notification from the servicing official. The installment schedule set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount. The last scheduled principal installment will be reduced by the amount of the balance previously generated by the reversal and reapplication of payments.

(4) When FmHA has processed a change of interest rate for an amortized loan and a reduction in installment amounts is needed to provide for a sound operation, the borrower may request reamortization in accordance with § 1951.223 of this subpart.

(5) The borrower will be notified in writing of the new interest rate as changed.

§§ 1951.242–1951.249 [Reserved]

§ 1951.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0066. Public reporting burden for this collection of information is estimated to vary from fifteen minutes to three hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Washington, DC 20503.

Exhibits: (available in any FmHA office)

Exhibit A—Report on Servicing Action
Exhibit B—Agreement for New Member (With or Without Withdrawing Member)
Exhibit C—Agreement for Withdrawal of Member (Without New Member)
Exhibit D—Items to be Included in Transfer and Assumption Dockets (if applicable)
Exhibit E—Interest Rate Requirements and Effective Dates
Exhibit F—Instruction to FmHA Personnel to Implement Public Law 100–233
Exhibit G—Letter to Borrower Notifying of Choice of Interest Rate
Exhibit H—Rescheduling Agreement—Public Bodies.

Dated: October 16, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90–2962 Filed 2–7–90; 8:45 am]

BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 89–023F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees primarily reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

On January 5, 1990, FSIS published a proposed rule in the **Federal Register** (55 FR 439) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products; and the ordinary costs of providing it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establisments. Any or all of these costs which are not a part of the mandatory inspection service are recoverable by the Government.

FSIS also provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5); the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed; and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the

services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services, by anticipated costs associated with changes in operations of the program, by increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970, and by other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of the pay raise of 3.6 percent for Federal employees effective January 1990, of increased costs of the Federal Employees Retirement System in 1990, and of increased health insurance and travel costs, FSIS is increasing the fees relating to such services.

The Agency did not receive any comments in response to the proposal. The rates provided for in this document are statutorily mandated and reflect only an incremental increase in the costs currently borne by those entities electing to utilize these and certain other voluntary inspection services. Therefore, the amendments, as proposed, to the Federal meat and poultry products inspection regulations are promulgated herein.

List of Subjects in 9 CFR Part 391

Meat inspection, Poultry products inspection, Fees and charges.

Accordingly, the Federal meat and poultry products inspection regulations, 9 CFR chapter III, are amended as follows:

PART 391—[AMENDED]

1. The authority citation for part 391 continues to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 (g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1624.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $26.68 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $27.24 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $46.60 per hour, per program employee.

The Administrator has determined that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register**.

Done at Washington, DC, on: February 1, 1990.

Ronald J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 90-2867 Filed 2-7-90; 8:45 am]

BILLING CODE 3410-DM-M

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from the FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

[Amdt. 1]

Conformance of Office of Hearings and Appeals ("OHA") Provision to Surety Bond Guarantee Regulation

AGENCY: Small Business Administration ("SBA").

ACTION: Final rule.

SUMMARY: This final rule conforms a jurisdictional paragraph of the OHA regulations to a newly adopted Surety Bond Guarantee (SBG) regulation. This SBG regulation gives sureties which have been suspended (as well as terminated) from participation in that program a right of review by OHA. Presently, the OHA regulation gives OHA jurisdiction over the termination, but not over the suspension, of SBG participants. This amendment supplies that authority.

EFFECTIVE DATE: This rule is effective February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Deputy General Counsel, Small Business Administration, Room 700, 1441 L Street NW., Washington, DC 20416. Tel. (202) 653-6644.

SUPPLEMENTARY INFORMATION: On November 9, 1989 SBA published an interim final rule for the Surety Bond Guarantee program, 13 CFR part 115 (54 FR 47166), implementing the Preferred Surety Bond Guarantee Program Act of 1988 ("Act"). The Act creates within SBA's existing Surety Bond Guarantee (SBG) program a pilot program which allows SBA to authorize selected surety companies to issue, monitor and service surety bonds subject to SBA's guarantee, without SBA's prior approval. The regulation provides that in certain circumstances a surety so authorized may be suspended or terminated by SBA, subject to a right to appeal such suspension or termination to OHA (13 CFR 115.62 (c) and (d) and 115.63(a). The OHA regulation, however, currently provides OHA jurisdiction only for termination, but not also for suspension from the SBG program (13 CFR 134.3(i)). Accordingly, it is necessary to amend § 134.3(i) to add such suspension to OHA's jurisdiction. Inasmuch as part 134 consists of rules relating to the Agency's delegation of authority and procedures, notice of proposed rule making, public participation, analysis under Executive Orders 12291 and 12612, the Paperwork Reduction Act, 44 U.S.C. ch. 35, and a regulatory flexibility review, under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not required and this amendment is adopted without resort to these procedures.

List of Subjects in 13 CFR part 134

Adminsitrative practice and procedure, Organization and function (government agencies)

Accordingly, part 134 of title 13, chapter I of the Code of Federal Regulations, is hereby amended as follows:

PART 134—[AMENDED]

1. The authority citations for part 134 continues to read as follows:

Authority: 15 U.S.C. 634(b)(7)

§ 134.3 [Amended]

2. Section 134.3 is amended by revising paragraph (i) to read as follows:

§ 134.3 Jurisdiction and function.

* * * * *

(i) Proceedings relative to the suspension or termination of surety bond program participants, pursuant to 15 U.S.C. 694a *et seq.* and part 115 of this chapter.

* * * * *

[Catalog of Federal Domestic Assistance 59.016 Bond Guarantees for Surety Companies]

Dated: December 22, 1989.

Katherine M. Bulow,

Deputy Administrator.

[FR Doc. 90-2876 Filed 2-7-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-190-AD; Amdt. 39-6507]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires a one-time eddy current inspection for cracks of the fuselage skin at certain lap joints. This amendment is prompted by reports of cracking of the fuselage skin at certain lap joints on airplanes with a similar lap joint configuration. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727 series airplanes, which requires a one-time eddy current inspection for cracks of the fuselage skin at certain lap joints, was published in the **Federal Register** on October 20, 1989 (54 FR 43079).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that a visual inspection from the inside was more accurate than the eddy current or ultrasonic inspection to determine the configuration of the inner skin. Therefore, a visual inspection should be acceptable as an alternate inspection. The FAA concurs that the visual inspection may be an acceptable inspection. Paragraph D. of the final rule provides for approvals of acceptable alternate means of compliance.

Another commenter stated that there were incorrect references to the figures in the Boeing Non-Destructive Testing (NDT) Manual. The FAA agrees. The manufacturer has advised the FAA that the figure numbers indicated in the preliminary version of the NDT manual were different from those in the final copy. The final rule has been revised to indicate the correct references to the Boeing NDT Manual.

Another commenter requested that the FAA review the need for the inspection to determine skin thickness (paragraph A.). This commenter indicated that this inspection is unnecessary since Boeing should have engineering drawings of this structure which provide information on skin thickness. The FAA does not concur. After discussions with the manufacturer, the FAA has concluded that Boeing is unable to accurately determine from its data which airplanes have the machined skins or bonded skins.

Another commenter requested that the compliance time for the initial inspection be extended from the proposed 600 landings to 2,000 landings so that it can be accomplished at a main maintenance based during a "C" check or during an overnight hold. If a repair is necessary, it can be done more efficiently at a main base. The FAA does not concur with the request. The number of airplanes that have the subject skin configuration is expected to be small, and the time required to accomplish the inspection is minimal (only 2 hours). Further, based on the average aircraft utilization rate for this model, the compliance time of 600 landings is equal to approximately four months; the FAA considers this interval to be an ample amount of time to schedule the required inspection.

One commenter requested that the reporting requirement be changed to only require positive reports and to allow 30 days to make the report. The FAA concurs that only positive reports are necessary, but does not concur with the suggested 30-day reporting time. The FAA does not consider the requirement to submit the report within 10 days after completion of the inspection to be an undue burden. The final rule has been revised to require only positive reports.

The final commenter stated that the eddy current inspection used to determine if the inner skin is bonded or machined is unreliable. Therefore, the commenter requested that only the eddy current inspection for cracking should be made mandatory, and that *all* airplanes be required to accomplish it. The FAA does not concur. The FAA has determined that the inspections to determine if the inner skin is bonded or machined are reliable, and a requirement for all airplanes to accomplish the inspection for cracks is unwarranted since the cracking addressed by this AD is likely to exist only on those airplaines with the specified configuration.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will not increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 370 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 280 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,400.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 14 CFR 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, line numbers 048 through 453, certificated in any category. Compliance required within the next 600 landings after the effective date of this AD, unless previously accomplished.

To detect cracking and prevent rapid depressurization, accomplish the following:

A. Conduct an eddy current inspection in accordance with the 727 Non-Destructive Testing Manual (NDT), D6–48875, Part 6, 53–30–27, Figure 8; or an ultrasonic inspection in accordance with the 727 NDT Manual, D6–48875, Part 4, 53–30–27, Figure 2; to determine the configuration of the fuselage skins located between stringer (S) 14 and S–19. If the skin has the .020 inch bonded doubler added to the .040 inch skin, conduct the inspection described in paragraph B., below; otherwise, no further action is required.

B. If the fuselage skins are determined to have the .040 inch skin with the .020 inch bonded doubler, conduct a one-time eddy current inspection for cracks of the overlapped skin in accordance with the 727 NDT Manual D6–48875, part 6, 53–30–27, Figure 9 or 10, near the bottom row of fasteners in the lower skin of the longitudinal lap splices located at S–14L from body station (BS) 440 to BS 720, and at S–14R from BS 440 to BS 540. Prior to further flight, repair any cracks found, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Within 10 days after completion of the inspections required by paragraph B., above, submit a report of positive findings of cracks on airplanes with the bonded doubler to the Manager, Seattle Aircraft Certification Office, ANM–100S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The report must include the line number of the airplane inspected, the number of cycles, and the size and locations of the cracks.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2907 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–281–AD; Amdt. 39–6479]

Airworthiness Directives; Lockheed Aeronautical Systems Company—Georgia Model 382G Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382G series airplanes, which requires an inspection of the engine fire extinguisher system squibs, and replacement, if necessary. This amendment is prompted by a report that certain fire extinguisher squibs, manufactured during a certain period, contain a deficiency in the potting compound used between the lead wire and the base, and may be subject to shorting. This condition, if not corrected, could result in inability to extinguish or control an engine fire.

EFFECTIVE DATE: February 26, 1990.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, Field Service Office, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Propulsion Branch, ACE–140A; telephone (404) 991–3810. Mailing address: FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: Whittaker Ordnance, a Lockheed supplier, has reported that Whittaker fire extinguisher squibs, Part Number 4199–1 (Lockheed Part Number 695679–15), which were manufactured during July 1987, have a deficiency in the potting compound used between the lead wire and the base, and may be subject to shorting. The part is identified with the last three digits of the part number as 199 and the manufacturing date as 7/87. This condition, if not corrected, could result in inability to extinguish or control an engine fire.

The FAA has reviewed and approved Lockheed Alert Service Bulletin A382–26–7, dated November 4, 1989, which describes procedures to inspect the engine fire extinguisher system squibs for a specific manufacturing date, and replace, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a one-time inspection of the engine fire extinguisher system squibs for a specific manufacturing date, and replacement, if necessary, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is

impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company-Georgia: Applies to Model 382G series airplanes, Serial Numbers 5022, 5025, 5027, and 5029, certificated in any category. Compliance is required within the next 25 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent the loss of the ability to extinguish a fire, accomplish the following:

A. Inspect all six wrenching surfaces (flats) on the hexagonal shaped part of the engine fire extinguisher system squibs to determine the part number and manufacturing date that is stamped on the wrenching surface, in accordance with Lockheed Alert Service Bulletin A382–26–7, dated November 4, 1989. Prior to further flight, remove all Whittaker Ordnance fire extinguisher squibs Part Number 4199–1 (Lockheed Part Number 695679–15) with manufacturing date 7/87, and install Whittaker Ordnance fire extinguisher squibs that do not have 7/87 stamped on the wrenching surfaces or other approved squibs.

Warning: Observe all applicable safety precautions during the inspection. The fire extinguisher squibs are similar to a pistol cartridge. The squibs contain an explosive charge which could cause injury or death if accidentally fired. Do not expose squibs to heat, or an electric current, or strike or drop squibs.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Atlanta, Georgia.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Atlanta Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, Field Service Office, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective February 26, 1990.

Issued in Seattle, Washington, on January 31, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2908 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–132–AD; Amdt. 39–6505]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–100 Series Airplanes, Serial No. 3 through 119, Inclusive, With Modification No. 8/0467 Incorporated, and Equipped With Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8–410–03, 8–410–04, or 8–410–05

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 series airplanes, which currently requires a revision of the Airplane Flight Manual (AFM) to include a pre-flight check of the nose gear cockpit indication system, and repair, if necessary, in order to preclude the possibility of the system indicating an erroneous nose gear position. The amendment requires modification of the landing gear control system which terminates the need for the pre-flight procedures required by the existing AD. This amendment is prompted by the development of a modification which includes certain wiring changes to make operation of the landing gear selector valve and the opening of the landing gear doors independent of the Proximity Switch Electronic Unit.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE–173, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York, 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 88–03–51, Amendment 39–5868 (53 FR 73483; March 8, 1988), applicable to certain de Havilland Model DHC–8–100 series airplanes, to require modification of the landing gear control system which terminates the need for the pre-flight procedures required by the existing AD, was published in the **Federal Register** on November 30, 1989 (54 FR 49302).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The modification kits will be provided by the manufacturer at no cost to the operator.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–5868 (53 FR 7348; March 8, 1988), AD 88–03–51, as follows:

Boeing of Canada, Ltd., de Havilland Division: Applies to de Havilland Model DHC–8–100 series airplanes, Serial Numbers 3 through 119, inclusive, with Modification No. 8/0467 incorporated, equipped with Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8–410–03, 8–410–04, or 8–410–05, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the possibility of the nose gear cockpit indication system indicating erroneous nose gear position, accomplish the following:

A. Within 24 hours after March 25, 1988 (the effective date of AD 88–03–51) add the following to the Limitations Section of the Airplane Flight Manual (AFM) and notify all crew members. This may be accomplished by inserting a copy of this AD in the AFM:

"1. Perform the following check prior to each flight. This check is to be performed even when the airplane is being operated with the anti-skid inoperative under the minimum equipment list:

a. Anti-skid switch—"OFF"

b. Anti-skid switch—"ON"

c. Check that inboard and outboard anti-skid caution lights illuminate, and then extinguish within 6 seconds. Should the lights fail to function as noted above, dispatch is prohibited until maintenance action clears the fault."

"2. While performing the 'After Take Off' and 'Approach' procedures:

a. Monitor the landing gear indication system during landing gear retraction and extension.

b. If there is any irregularity in gear indication or operation at any time throughout the flight, the gear must be confirmed DOWN AND LOCKED using the alternate down-lock verification system, irrespective of gear DOWN AND LOCKED (green) indication on the normal landing gear indicating system."

B. Any in-flight landing gear irregularity must be corrected prior to further flight.

C. Within 60 days after the effective date of this amendment, modify the landing gear control system, in accordance with de Havilland Service Bulletin 8–23–70, Revision B, dated December 2, 1988. This modification constitutes terminating action for the requirements of paragraphs A. and B. of this AD, and the revised operating procedures may be removed from the AFM.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment amends Amendment 39–5868, AD 88–03–51.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2906 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–CE–31–AD; Amdt. 39–6436]

Airworthiness Directives; SOCATA-Groupe Aerospatiale Models TB 10, TB 20, and TB 21 Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87–22–02, applicable to SOCATA Models TB 10, TB 20, and TB 21 airplanes, to include a terminating action for the repetitive inspections currently required by the AD. The manufacturer has developed a modification affecting the fuselage bulkhead and the FAA has determined that the repetitive inspections are not required on airplanes so modified. This amendment incorporates this alternate provision into the AD.

EFFECTIVE DATES: February 26, 1990. Comments for inclusion in the Rules Docket must be received on or before April 2, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: SOCATA Service Bulletin (SB) Number 35/1, dated December 1987, applicable to this AD may be obtained from the Product Support Manager, SOCATA-Groupe Aerospatiale, U.S. Marketing and Product Support 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641–3614; or SOCATA-Groupe Aerospatiale, B.P. 38, 65001 Tarbes, France; Telephone 62 51 7300. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 87–CE–31–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace

Engineer, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932, or Mr. Everett W. Pittman, Aerospace Engineer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30.

SUPPLEMENTARY INFORMATION: To prevent loss of pitch control on SOCATA Models TB 10, TB 20, and TB 21 airplanes, AD 87-22-02, Amendment 39-5756, published in the Federal Register on October 29, 1987 (52 FR 41556), requires repetitive visual inspections, and replacement of fuselage frame No. 9 if cracks are found. Subsequent to the issuance of AD 87-22-02, SOCATA has issued SB No. 35/1 which specifies Modification No. 70, consisting of a reinforcement to the No. 9 fuselage bulkhead. SOCATA Model TB 9 airplanes incorporate this modification as part of the approved type design approved by the FAA.

The Direction Generale de l'Aviation Civile (DGAC), which has the responsibility and authority to maintain the continuing airworthiness of these airplanes in France, has classified SOCATA SB No. 35/1 and the modification specified therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. The DGAC has also determined that this modification is a suitable terminating action for the previously mandated repetitive inspections. On airplanes operated under French registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of SOCATA SB No. 35/1, dated December 1987, and the mandatory classification of this service information by the DGAC. Based on the foregoing, the FAA has determined that this terminating action should be incorporated into AD 87-22-02 as an alternative to the repetitive inspections. Therefore, AD 87-22-02 is being amended to allow either the specified repetitive inspections on SOCATA Model TB 10, TB 20, and TB 21 airplanes or the incorporation of Modification No. 70 on the airplane. In addition, other minor editorial changes are being incorporated into the AD.

This amendment provides a procedure by which the safety of the subject airplanes would be enhanced by an improvement in structural integrity and a consequent relief from repetitive inspections. Accordingly, the FAA has determined that notice thereof would be contrary to the public interest under section 553(b)(3)(B) of the Administrative Procedure Act (APA), in that it would delay the availability of this relief. Further, because this amendment relieves a restriction, this amendment may be made effective in less than 30 days, pursuant to section 553(d)(1) of the APA.

Although this action is in the form of a final rule and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submtting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA-public contact concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising and reissuing AD 87-22-02, Amendment 39-5756, to read as follows:

Socata: Applies to Models TB 10, TB 20, and TB 21 (Serial Numbers 1 through 795 inclusive) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent structural failure of the horizontal stabilizer/elevator attachment and loss of pitch control, accomplish the following:

(a) Upon the accumulation of 700 hours total time-in-service (TIS) or within the next 25 hours TIS, whichever comes later, unless previously accomplished per AD 87-22-02 (unrevised), visually inspect for cracks on the forward and aft surface of fuselage frame Number 9 (SOCATA P/N TB 10.21.010.102) in the area of the hinge and attachment fittings of the horizontal stabilizer/elevator. If the existence of a crack is uncertain, remove the horizontal stabilizer and attachment fittings and perform a dye penetrant inspection of the area.

(1) If no cracks are found as a result of the inspection in paragraph (a) above, repeat the inspection at intervals not to exceed 100 hours TIS thereafter.

(2) If cracks are found as a result of any of the above inspections, prior to further flight replace the cracked fuselage frame Number 9 with a new serviceable part.

(b) The repetitive inspections specified in paragraph (a)(1) of this AD may be suspended for a period not to exceed 700 hours TIS after the repairs specified in paragraph (a)(2) have been accomplished.

(c) If Modification No. 70, specified in SOCATA Service Bulletin No. 35/1, dated December 1987, has been installed on the airplane, and if no crack existed in the fuselage frame when Modification No. 70 was installed, then the repetitive inspections specified in paragraph (a)(1) are no longer required.

(d) Airplanes may be flown in accordance with Section 21.197 of the FAR to a location where these inspections may be performed. Once any crack is detected on fuselage frame Number 9, no further flight is authorized until repairs are completed.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Product Support Manager, SOCATA-Groupe Aerospatiale, U.S. Marketing and Product Support, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; or SOCATA-Groupe Aerospace, B.P. 38, 65001 Tarbes, France; Telephone 62 51 7300; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Amendment amends AD 87-22-02, Amendment 39-5756.

This amendment becomes effective on February 26, 1990.

Issued in Kansas City, Missouri, on January 30, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2910 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-173-AD; Amdt. 39-6502]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires modification of the Auxiliary Power Unit (APU) electrical circuit to preclude operating the APU without fire detection capability. This amendment is prompted by a determination that the APU will be shut down and the fire detection circuit unpowered during the subsequent 60 second cool down cycle if the DC power battery switch is switched to the OFF position. This condition, if not corrected, could result in an undetected APU fire during the 60 second cool down cycle.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Dostert, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address. FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747-400 series airplanes, which requires modification of the Auxiliary Power Unit (APU) electrical circuit to preclude operating the APU without fire detection capability, was published in the **Federal Register** on September 26, 1989 (54 FR 39403).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The only comments received were submitted by the Air Transport Association (ATA) of America, who requested the proposed 30 day compliance period be extended to 90 days after the effective date of the AD to allow operators time to adjust maintenance schedules to include a two day out-of-service period for accomplishment of the modification. ATA also pointed out that the operational limitation included in the proposed AD as interim action would be in effect during the extended compliance period and should provide an equivalent level of safety.

The FAA concurs with this request. The proposed compliance time of 30 days for modification to the APU electrical circuit was established after careful consideration of risk, the number of airplanes affected, the predicted availability of parts, and the potential for disruption in operators' scheduled operations. Following issuance of the NPRM, the FAA has been advised that, due to airplane configuration differences, removal of aircraft seats and floor panels may be required on some airplanes to facilitate incorporation of the APU wiring modification. Accordingly, the FAA has revised paragraph A. of the final rule to reflect the compliance time as 90 days for modification of the APU electrical power circuit to allow operators to schedule a two-day maintenance period. The interim limitation required by this AD will ensure adequate fire detection capability until the modification is completed.

Since issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 747-26-2135, Revision 1, dated December 21, 1989. This revision corrects errors in the origianl issue of the service bulletin. The final rule has been revised to reference Revision 1 of the Boeing Service Bulletin as the appropriate service information source.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 19 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 45 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implicaitons to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes, as listed in Boeing Service Bulletin 747-28-2135, Revision 1, dated December 21, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude operation of the APU without fire detection, accomplish the following:

A. Within the next ten days after the effective date of this AD, unless previously accomplished, add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM:

Auxiliary Power Unit: "The DC power main battery switch must remain in the ON position during all APU operation including the 60 second cool down cycle following APU shutdown."

B. Within the next 90 days after the effective date of this AD, modify the APU electrical power circuit in accordance with Boeing Service Bulletin 747-28-2135, Revision 1, dated December 21, 1989.

C. The Airplane Flight Manual limitation required by paragraph A., above, may be removed following incorporation of the modification required by paragraph B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2911 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-214-AD; Amdt. 39-6506]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes Equipped with Lavatories H and J

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes equipped with lavatories H and J, which requires modification of the overhead light assemblies installed in those lavatories and inspection of the insulation blankets in the area of the H and J lavatories. This amendment is prompted by reports of an electrical short in the light assembly terminal cap. This condition, if not corrected, could result in an in-flight fire in the overhead of a lavatory if an electrical short occurs and the insulation blanket above the light assembly is loose.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5342.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-10 series airplanes equipped with lavatories H and J, which requires modification of the overhead light assemblies installed in those lavatories and inspection of the insulation blankets in the area of the H and J lavatories, was published as a Supplemental NPRM in the **Federal Register** on October 3, 1989 (54 FR 40680).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America stated that the 60 day proposed compliance period was too short, since the published lead time for parts in McDonnell Douglas Service Bulletin 25-357 was 180 days; ATA suggested a 12 month compliance time. The FAA disagrees. The FAA contacted the airframe manufacturer, McDonnell Douglas, and determined that an adequate number of kits will be available for affected operators to meet the 60 day compliance time as proposed.

The ATA also indicated that one member operator requested that the compliance time be extended since this operator considered that both the number of required parts and the time necessary for modification were extensive. The FAA disagrees. The manufacturer has advised that the modification requires a minimal quantity of uncomplicated parts, and the time required to accomplish the modification is three elapsed hours (6 manhours).

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 428 McDonnell Douglas Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost for required parts is estimated to be $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,120.

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 series airplanes equipped with lavatories H and J, as listed in McDonnell Douglas Service Bulletin 25-357, dated September 5, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire resulting from an electrical short in the H and J lavatory overhead light assembly terminal caps, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the overhead light assemblies in lavatories H and J, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25-357, dated September 5, 1989.

B. Within 60 days after the effective date of this AD, inspect the insulation blankets and foam insulating material in the areas above lavatories H and J and in the areas outboard of lavatories H and J. Prior to further flight, replace any insulation blankets and/or foam insulating material which has been contaminated by passenger door drive chain lubricant.

C. An alternate means of compliance of adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the officer indicated above.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operated airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2912 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-143-AD; Amdt. 39-6504]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 and MD-88 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 and MD-88 series airplanes, which requires modification of the aircraft to revise the wiring of the takeoff warning system throttle lever switches in order to place them in series instead of parallel. This amendment is prompted by an FAA review of large turbofan/turbojet aircraft takeoff configuration warning systems, which concluded that takeoff warning systems deactivated by flight crews because of nuisance warnings during less-than-all-engine taxi operation pose a potential problem if the deactivation is not annunciated to the flight crew. This condition, if not corrected, could result in takeoff of an airplane in an unsafe takeoff configuration.

DATES: Effective March 8, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5342.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9-80 and MD-88 series airplanes, which requires modification of the aircraft to revise the wiring of the takeoff warning system throttle lever switches in order to place them in series instead of parallel, was published in the **Federal Register** on September 26, 1989 (54 FR 39405).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America requested the FAA to consider the reduction in reliability with this change, to consider McDonnell Douglas Service Bulletin 31-34 as an equivalent means of compliance, and to consider a compliance time of 18 months instead of 12 months to avoid "special scheduling" by operators of large Model DC-9-80 or MD-88 fleets.

The FAA considered the effect of this modification on the reliability of the takeoff warning system prior to the issuance of the NPRM. McDonnell Douglas indicated at that time the probability of losing either throttle lever switch was 2.44×10^{-5} for a 10 hour exposure. With the switches in parallel, the takeoff warning system availability figure was 94.9 percent. Placing the

switches in series does not affect the system reliability, but does reduce the system availability figure to 92.4 percent. This decrease is considered acceptable by the FAA.

The proposed rule indicated McDonnell Douglas was developing a modification to the Model DC-9-80 and MD-88 wiring for the takeoff warning system throttle lever switches which would place them in series rather than in parallel. It further indicated that, if service information was available, FAA would consider referencing this informaton in the final rule. Since issuance of the NPRM, McDonnell Douglas has released Service Bulletin 31-34, dated December 20, 1989, to provide modification instructions for wiring of the throttle lever switches. The FAA has reviewed and approved this service bulletin. Accordingly, the final rule has been revised to include accomplishment of McDonnell Douglas Service Bulletin 31-34 as a means of compliance with the requirements of the rule.

The FAA investigated how extensive the modification is by reviewing McDonnell Douglas Service Bulletin 31-34. The service bulletin instructions require replacement of one terminal block in the radio rack, reconnection and reidentification of three wires in the radio rack, addition of a socket in a forward pedestal connector, and reconnection and reidentification of one wire in the forward pedestal. The new terminal block and socket are readily available. Elapsed time published in the service bulletin for accomplishing the modification is three hours (6.1 manhours). The largest U.S. operator of Model DC-9-80 aircraft has a fleet of 173 aircraft and the largest U.S. operator of Model MD-88 aircraft has a fleet of 46 aircraft. The FAA therefore disagrees with the requested extension of compliance time to 18 months and has determined that the 12 month compliance time is adequate to complete the modification on the affected aircraft.

The economic impact paragraph, below, has been revised to specify that the current estimated number of manhours required to accomplish the modification is 6.1 manhours.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 605 Model DC-9-80 and MD-88 series airplanes of the affected design in the worldwide fleet. It is estimated that 364 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6.1 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $88,816.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-80 and MD-88 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent takeoff of an airplane while in an unsafe configuration for takeoff, due to deactivation of the takeoff warning system by the flight crew to eliminate nuisance warnings of the takeoff warning system during single-engine taxi operation, accomplish the following:

A. Within 12 months after the effective date of this AD, rewire the takeoff warning system throttle lever switches to place them in series, rather than in parallel, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, or in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 31-34, dated December 20, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: This request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806.

This amendment becomes effective March 8, 1990.

Issued in Seattle, Washington, on January 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2909 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AEA-16]

Establish Control Zone; Wheeler Sack, NY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: Errors were discovered in the final rule published in the **Federal Register** on November 21, 1989, establishing a control zone at Wheeler

Sack, NY. This action corrects those errors.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 88-AEA-16, published on Tuesday, November 21, 1989 (54 FR 48081), established a Control Zone at Wheeler Sack, NY. An error was discovered in the geographic coordinates for the Wheeler Sack Army Air Field (AAF), Fort Drum, NY, upon which the Control Zone is based. In addition, the control zone extension utilizing the Watertown, NY VORTAC actually falls within the 5-mile radius of the airport when the description is actually charted. The resulting description of the Control Zone will remain unchanged when charted on the appropriate aeronautical charts. This action corrects those errors.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 88-AEA-16, as published in the Federal Register on November 21, 1989 (54 FR 48081), is corrected to read as follows:

§ 71.171 [Corrected]

1. Under "Wheeler Sack, NY [New]", page 48081, column 3, the legal description should read as follows:

Wheeler Sack, NY [Corrected]

By removing "(lat. 44°03'11" N., long. 75°43'17" W.)" and substituting "(lat. 44°03'00" N., long. 75°44'00" W.)".

By removing the section which reads as follows:

"and within 2 miles each side of the Watertown VORTAC (lat. 43°57'07" N. long. 76°03'54" W.) 065°(T) 078°(M) radial extending from the 5 mile radius zone to 12 (nautical) miles northeast of the Watertown VORTAC"

Issued in Jamaica, New York, on January 10, 1990.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 90-2913 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AC50

Supplemental Security Income for the Aged, Blind, and Disabled

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules implement section 9109 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, which amended section 1631(a)(4)(A) of the Social Security Act (the Act). Effective December 22, 1987, this provision increased the maximum emergency advance payment that can be paid to an individual presumptively eligible for supplemental security income (SSI) benefits from $100 to an amount equal to the Federal benefit rate plus the State supplementary payment (if any) payable to an eligible individual who has no other income.

EFFECTIVE DATE: These rules are effective February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1758.

SUPPLEMENTAL INFORMATION: Section 1631(a)(4)(A) of the Act authorizes an emergency advance payment (EAP) to an individual who initially files for SSI benefits, is presumptively eligible for such benefits, and who is faced with a financial emergency. These expedited payments are made to meet financial emergencies before eligibility can be determined in cases in which eligibility is expected to be found. Before December 22, 1987, the maximum amount that could be advanced was $100 (or $200 for a couple). Effective December 22, 1987, the maximum EAP amount was raised to an amount equal to the Federal benefit rate plus any federally-administered State supplementary payment that would be payable to an eligible individual who has no other countable income. As before the amendment, because it is an advance against future benefits, an EAP is later deducted from the benefits due if the individual is determined to be eligible. We have revised § 416.520 to explain how the EAP is computed and, if applicable, recovered.

We are also changing § 416.502 to omit references to checks in the discussion on the manner of SSI payment, in order to accommodate direct deposits to financial institutions and to provide that payments may be made before the first day of a month under certain circumstances. We are also revising § 416.1403 to change the term "emergency cash advance" to "emergency advance payment."

Discussion of Comments

These rules were published as a Notice of Proposed Rulemaking in the Federal Register on February 27, 1989 (54 FR 8215). The only comment we received suggested that, prior to granting an EAP, we should determine if the State has advanced interim assistance to the individual as emergency assistance, which would then be reimbursable to that State.

The interim assistance provision (section 1631(g) of the Act) authorizes the Social Security Administration (SSA) to make payment of SSI benefits and/or State supplementary payments due to an individual to a State. This payment is a reimbursement for interim assistance furnished an individual by the State if the individual has filed an authorization form and other requirements are met. However, under section 1631(g)(2) of the Act an EAP is specifically excluded from the benefits which SSA is authorized to pay to a State as reimbursement for interim assistance furnished the individual.

If it is the commenter's concern that interim assistance be considered along with other income, when evaluating an individual's financial emergency to

decide if his or her income and resources are insufficient, we would note that considering interim assistance for this determination is an ongoing operational requirement of SSA.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because no additional program or administrative costs are contemplated and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These final regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Program)

List of Subjects in 20 CFR Part 416

Administration practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: October 31, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 12, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g).

2. Section 416.502 is revised to read as follows:

§ 416.502 Manner of payment.

For the month an individual first meets all eligibility requirements or reestablishes eligibility after a month of ineligibility, an SSI payment will be made on or after the day of the month on which the individual becomes eligible or reeligible to receive benefits. In all other months, a payment will be made on the first day of each month and represents payment for that month. If the first day of the month falls on a Saturday, Sunday, or legal holiday, payments will be made on the first day preceding such day which is not a Saturday, Sunday, or legal holiday. Unless otherwise indicated, the monthly amount for an eligible couple will be divided equally and paid separately to each individual. Section 416.520 explains emergency advance payments.

3. Section 416.520 is revised to read as follows:

§ 416.520 Emergency advance payments.

(a) *General.* Before we make a determination on an application, we may pay a one-time emergency advance payment to an individual who is presumptively eligible for SSI benefits and who has a financial emergency. The amount of this payment cannot exceed the Federal benefit rate (see §§ 416.410 through 416.414) plus the State supplementary payment, if any (see § 416.2020), which apply for the month in which payment is made. "Emergency advance payment" is defined in paragraph (b)(1) of this section. The actual payment amount is computed as explained in paragraph (c) of this section. An emergency advance payment is an advance of benefits expected to be due that is recoverable as explained in paragraphs (d) and (e) of this section.

(b) *Definition of terms.*

For purposes of this subpart—

(1) *"Emergency advance payment"* means a direct, expedited payment by a Social Security Administration district or branch office to an individual or spouse who is initially applying (see paragraph (b)(3) of this section) and has not been determined eligible, who is presumptively eligible (see paragraph (b)(4) of this section), and who has a financial emergency (see paragraph (b)(2) of this section.

(2) *"Financial emergency"* is the financial status of an individual who has insufficient income or resources to meet an immediate threat to health or safety, such as the lack of food, clothing, shelter, or medical care.

(3) *"Initially applying"* means the filing of an application (see § 416.310) which requires an initial determination of eligibility, such as the first application for SSI benefits or an application filed subsequent to a prior denial or termination of a prior period of eligibility for payment. An individual or spouse who previously received an emergency advance payment in a prior period of eligibility which terminated may again receive such a payment if he or she reapplies for SSI and meets the other conditions for an emergency advance payment under this section.

(4) *"Presumptively eligible"* is the status of an individual or spouse who presents strong evidence of the likelihood of meeting the income and resources tests of eligibility (see subparts K and L of this part), categorical eligibility (age, disability, or blindness), and technical eligibility (United States residency and citizenship or alien status—see subpart P).

(c) *Computation of payment amount.* To compute the emergency advance payment amount, the maximum amount described in paragraph (a) of this section is compared to both the expected benefit payable for the month the payment is made (see paragraph (c)(1) of this section) and the amount the applicant requested to meet the emergency. The actual payment amount is no more than the least of these three months.

(1) In computing the emergency advance payment amount, we apply the monthly income counting and proration rules apppropriate for the month in which the advance is paid, as explained in §§ 416.420 and 416.421.

(2) For a couple, we separately compute each member's emergency advance payment amount.

(d) *Recovery of emergency advance payment where eligibility is established.* The amount of an emergency advance payment is deducted from payment(s) certified to the United States Treasury when the individual or spouse is determined to be eligible. (See paragraph (e) of this section if the individual or spouse is determined to be ineligible.)

(e) *Disposition of emergency advance payments where eligibility is not established.* If a presumptively eligible individual (or spouse) or couple is determined to be ineligible, the emergency advance payment constitutes a recoverable overpayment. (See the exception in § 416.537(b)(1) when payment is made on the basis of presumptive disability or presumptive blindness.)

4. The authority citation for Subpart N continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

5. Section 416.1403 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(2) An emergency advance payment (as defined in § 416.520(b)).

* * * * *

(b) * * *

(1) If you receive an emergency advance payment or presumptive disability or presumptive blindness payments, we will provide a notice explaining the nature and conditions of the payments.

* * * * *

[FR Doc. 90-2852 Filed 2-7-90; 8:45 am]

BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142 and 143

[WH-FRL-3720-6]

National Primary Drinking Water Regulations; Public Notification of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In September 1989, EPA published a handbook, *General Public Notification for Public water Systems,* in support of the revised public notification regulation under the Safe Drinking Water Act. The revised public notice regulation was published on October 28, 1987 (52 FR 41534). Technical amendments correcting errors in the revised rule were published on April 17, 1989 (54 FR 15185).

The handbook was developed to assist owners, operators, and managers of public water systems in carrying out their responsibilities under the revised rules. The handbook explains the EPA requirements and gives examples of types of public notices which the agency considers acceptable. In addition, the handbook discusses public notification requirements for violations of the primary and secondary drinking water standards for fluoride, and notification requirements for unregulated contaminants.

The handbook provides an explanation of the federal regulations only. States having primary responsibility (i.e., "primacy") for administering the public drinking water program in lieu of EPA are required to adopt public notification regulations that are at least as stringent as the federal requirements. Currently, all states and insular areas—with the exception of the District of Columbia, Indiana, Wyoming, and all Indian tribes—have primacy. Public water systems are encouraged to contact their primacy agent before issuing public notice to ensure compliance with state requirements.

ADDRESSES: To obtain a single copy of the handbook, write to U.S. Environmental Protection Agency, Office of Drinking Water (WH-550), 401 M Street, SW., Washington, DC 20460, attention: Charlene Shaw.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426-4791, or in Washington, DC at (202) 382-5533, or Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-5522.

Dated: January 26, 1990.

Robert H. Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 90-2676 Filed 2-7-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

[Docket No. HM-164D; Amdt. No. 177-75]

RIN 2137-AB78

Deletion of Appendix A to Part 177

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending 49 CFR part 177 by deleting Appendix A thereto. Appendix A is a DOT policy statement which no longer is necessary.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of Chief Counsel, (202) 366-4400 or Ray Gassaway, Transportation Specialist, Office of Hazardous Materials Transportation, (202) 366-4488; Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: In 1981, the Research and Special Programs Administration published Appendix A to part 177 of 49 CFR in order to provide guidance to state and local governments about preemption issues arising under part 177. Entitled "Relationship Between Routing Requirements in part 177 with State and Local Requirements," Appendix A expressly states that it is a DOT policy statement.

In a recent decision in *State of Ohio* v. *United States Department of Transportation,* C81-1394 (N.D. Ohio, October 4, 1989), the Court held invalid the provision in Appendix A which addresses state or local prenotification requirements. Despite DOT's position that Appendix A is merely a policy statement, the Court held, *inter alia,* that DOT had issued a "generic determination of inconsistency" without complying with its own inconsistency ruling regulations.

Following the Court's decision, RSPA reexamined all of Appendix A and determined that it no longer is necessary. Since the issuance of Appendix A in 1981, RSPA has addressed radioactive materials transportation preemption issues arising under the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. App. 1801 *et seq.,* in numerous inconsistency rulings issued under 49 CFR 107.203 *et seq.*

RSPA's advisory inconsistency rulings were summarized in a notice printed in the **Federal Register** last June (54 FR 26710; June 23, 1989). The thoroughness with which RSPA's inconsistency rulings have discussed radioactive materials transportation issues is demonstrated by the following excerpt from that **Federal Register** Notice:

> Since HMTA and HMR (Hazardous Materials Regulations; 49 CFR 100-199) have almost completely occupied the field of RAM (radioactive materials) transportation safety, state and local requirements are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are inconsistent. *IR-8; *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13; *IR-15; *IR-18; *IR-18(A); #IR-19; #IR-19(A); #IR-20; *IR-21; *IR-21(A); *IR-27. [* indicates a RAM ruling; # indicates a ruling involving RAM and other hazardous materials.]

In light of the guidance provided by these and other inconsistency rulings discussing radioactive materials transportation issues, Appendix A is no longer required. Therefore, RSPA is removing it from the CFR.

Because this action removes from the CFR a policy statement for which prior

notice is not required under 5 U.S.C. 553, this document is published as a final rule. Similarly, because this publication involves a policy statement, it is effective immediately.

Administrative Notice

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A final regulatory evaluation was not prepared as this action is not a substantive change. I certify that this action will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this action in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or on the distribution of power and responsibilities among levels of government. Thus, this action contains no policies that have Federalism implications as defined in Executive Order 12612.

List of Subjects in 49 CFR Part 177

Hazardous materials transportation, Highway route controlled quantity, Radioactive materials, Routing, Shipping, Carriers.

In consideration of the foregoing, 49 CFR part 177 is amended as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1, unless otherwise noted.

Appendix A to Part 177—[Removed]

2. Appendix A to part 177 is removed.

Issued in Washington, DC on February 1, 1990, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 90-2851 Filed 2-8-90; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 12]

RIN 2127-AC53

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule amending Motor Vehicle Safety Standard No. 108 that was published on May 9, 1989. It clarifies that High Intensity Discharge headlighting systems are not excluded as integral beam headlighting systems. Definitions of "beam contributor" and "vehicle headlamp aiming device" are adopted. Petitions asking for elimination of horizontal aim requirements are denied. Equipment marking requirements are modified to allow use of the vehicle manufacturer's name on original equipment. The lengthy informational label required by the final rule if certain aim performance is not achievable effective June 8, 1989, has been suspended. Under requirements effective September 1, 1990, the information on the label may be shortened to a caution, provided that it refers the reader to the operator's manual for a further explanation, and provided that the manual contains such information. Finally, clarifying information has been added to the requirement for torque deflection performance for mechanically-aimed headlamps.

EFFECTIVE DATE: The final rule is effective March 12, 1990, except that the requirements of S7.7.2.1 and S7.7.5.2(b) relating to information to be provided on a label on the vehicle, and in the operator's manual are effective September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202-366-5280).

SUPPLEMENTARY INFORMATION: On May 9, 1989, NHTSA published amendments to Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* (Notice 8, 54 FR 20066). In pertinent part, NHTSA added a new category of headlamps without dimensional requirements, known as "integral beam headlamps". An on-vehicle mechanical aim alternative to existing off-vehicle mechanical aim was also adopted. Subsequently, on July 19, 1989, NHTSA published technical amendments to the rule (Notice 9, 54 FR 30223). Thereafter, on August 1, 1989, NHTSA published an interim final rule establishing a new effective date of December 1, 1989, for downward torque deflection requirements, and requested comments on its action (Notice 10, 54 FR 31687). In response to comments to that notice, the effective date was further delayed to September 1, 1990 (Notice 11, 54 FR 49296).

Petitions for reconsideration of various aspects of the amendment were filed by Ford Motor Company ("Ford"), General Motors Corporation ("GM"), Motor Vehicle Manufacturers Association ("MVMA"), Volkswagen of America ("VW"), and Koito Manufacturing Co., Ltd. ("Koito"). Chrysler Corporation adopted by reference the petition submitted by MVMA.

Discussion of Petitions

Issues Relating to Integral Beam Headlamp Systems

Paragraph S7.4 specifies requirements for integral beam headlamp systems. The intent of this new specification is to allow design freedom in meeting the photometric requirements specified by Standard No. 108. The design freedom permitted is wide enough to encompass headlamp systems of no specified dimensions, or systems in which more than one "beam contributor" combines to provide an upper or lower beam. However, some of the language adopted has been viewed as design restrictive. For example, section S7.4(f) contains the beam requirements for headlamps containing a single "filament", and section S7.4(1)(viii), in establishing criteria for the vibration test, requires no evidence of loose or broken parts other than "filaments". The High Intensity Discharge (HID) headlamps currently under development, and which may be offered on motor vehicles in the near future, do not contain filaments. Thus, the question arises whether NHTSA has impliedly excluded HID headlamps as an integral beam headlamp system by its use of the word "filaments". NHTSA did not intend to exclude HID systems, and has amended the two sections mentioned above, and section S5.5.9 as well, to remove any language that might be interpreted as barring HID systems.

VW recommended that the term "beam contributor" be defined. The agency concurs in this recommendation and a definition is added to section S4 to specify that a beam contributor is "an

indivisible optical assembly, including lens, reflector, and light source, that is part of an integral beam headlamp system and contributes only a portion of a headlamp beam".

Koito requested reconsideration of the application of the photometric performance of S7.4(a)(2) to headlighting systems other than integral beam systems. This section allows an exception to the performance of Figure 15. Koito argues that the exception should also be provided for the Type F sealed beam system, and to four-lamp replaceable bulb headlighting systems.

In implementing the performance of Figure 15, and the allowance that the lower beam could remain activated during upper beam use, the test point values were specifically adjusted to assure that two goals could be achieved. The first is that upper beam foreground illumination would not be any brighter, relative to down-the-road light, than existing headlamp systems. The second is that the upper beam headlamp could achieve photometric compliance without the aid of the lower beam lamp. The exception provided by S7.4(a)(2) specifically addressed GM's 55 × 135 mm integral beam headlamp system. The lamp that would normally provide the upper beam in that system is too small to achieve compliance alone; it must have the light emitted by the lower beam in order that the headlighting system achieve upper beam compliance.

If such an exception were allowed for the existing Type F sealed beam system, the result could be headlamps interchangeable in size, but without a corresponding identicality in photometric performance. This could result in deficient upper beam performance that does not meet the need for safety. Therefore, NHTSA has decided not to extend the excepted performance of S7.4(a)(2) to other headlighting systems, and to deny Koito's petition.

Issue Relating to Replaceable Bulb Headlamp System

Sections S7.5 (d)(1) and (e)(1) provide that there shall be no mechanism that allows adjustment of an individual light source in a replaceable bulb headlamp system, or, if there are two light sources, individual adjustment of each reflector. Koito regards the sections as imposing a design restriction, and that there is no need for it. Because Standard No. 108 now permits on-vehicle aiming as an option (VHAD), the agency should not prohibit two reflectors with VHADs within a single headlamp housing.

The intent of the two sections is to assure that replaceable bulb headlamps that are mechanically aimable using lens-mounted aiming pads have an unalterable relationship between the light source, reflector, lens, and aiming pads. This requirement is still required for headlamps that use external aiming devices as required by S7.7.5.1. By amending the two sections to restrict them to headlamps meeting the external aiming requirements of S7.7.5.1, the agency recognizes the validity of Koito's argument, and grants its petition.

Issues Relating to Aimability Performance Requirements

Major amendments were adopted in May regarding headlamp aimability and aim. A number of petitions asked for reconsideration of certain of the new requirements of section S7.7 *Aimability Performance Requirements.*

Section S7.7.2 called for vehicles to be equipped with on-board headlamp aiming devices, and used the term VHAD (vehicle headlamp aiming device) in reference to them. The amendment did not define the term. Questions have arisen as to whether the VHAD must be integral with the headlamp or headlamp assembly, or whether a detachable VHAD is permissible. The intent of the requirement is that the VHAD be a permanent part of the vehicle, and not separable from it. Thus, the VHAD may be integral with the headlamp, or separate from it but integral with the headlamp assembly or the vehicle, but it may not be removable for storage in the vehicle or elsewhere when not in use. Accordingly, the agency is adopting a definition for VHAD and correcting ambiguous language in order to clarify its intent.

The VHAD measures both horizontal and vertical aim of the headlamp. The requirements for horizontal aimability and the capability of the VHAD were objected to by GM, MVMA, and Ford. MVMA termed this "our most serious concern with Notice 8". It cites previous arguments in support of the deletion of horizontal aimability requirements from Standard No. 108, arguing that "design can be employed wherein horizontal aim will not vary during the normal course of a vehicle's life, nor will it vary upon headlamp replacement, thereby obviating the need for horizontal aimability." Ford believes that the agency has overstated its concern with the adverse effects of glare, resulting from improper horizontal aim.

Specifically, section S7.7.2 requires all headlamps to be aimable in the vertical and horizontal axes. Section S7.7.4 specifies a range of horizontal aim adjustment range when a headlamp is tested in a laboratory. Ford, claiming that these requirements are unnecessarily restrictive for a manufacturer who can assemble cars within a stringent horizontal aim tolerance, would add an exception to these sections. A manufacturer would have the option of installing headlamps with a mounting and aiming mechanism that provides only vertical aim adjustment, if, in addition, the headlamps as installed meet a horizontal aim specification of 0.0 +0.8/−0.4 degree. Ford avers that this specification is at least as stringent as any current State horizontal aim requirement.

NHTSA has reviewed the petitions by GM, MVMA, and Ford. First, the agency does not vary from its conclusion that specification and maintenance of horizontal aim requirements meet the need for motor vehicle safety. Not only is proper horizontal aim necessary to prevent glare to oncoming drivers, but it is also necessary to ensure that the roadway is illuminated by the headlamp in the manner intended to achieve the headlamp's full capability of providing light by which the operator may safely drive. NHTSA finds two fundamental areas of concern with respect to arguments against horizontal aimability.

The first is that, without the capability of horizontal aim measurement, the compliance of such a headlamp with Federal requirements for photometrics could not be verified. This lack of measurement capability could also create difficulties for owners, inspectors, and repair personnel in States which prescribe horizontal aim requirements as part of their vehicle inspection programs, since there would be no means to measure and verify the correctness of aim.

Secondly, although vehicles manufactured to Ford's specifications presumably could be manufactured with proper horizontal aim, circumstances can occur during the life of the vehicle that adversely affect maintenance of correct horizontal aim. Thus, the long term safety of such vehicles as Ford and others would build, as a group, could be lower than that of vehicles which have horizontal aimability. Without horizontal aim measurement and adjustment capability, it is unclear if the accuracy of horizontal aim could be assured after repair of accident damage. Manufacturers could address this concern by providing dimensional data for precise structural alignment of the vehicle in shop manuals, and appropriate instructions for performing the necessary and potentially extensive parts replacement and vehicle reconstruction requisite for correct horizontal aim. These data would assist

repair shops in reestablishing the proper relationship between parts of the VHAD and the longitudinal axis of the vehicle.

However, a VHAD with horizontal aim capability would accomplish this with far greater simplicity, reliability, and less margin for error. While dimensional data and instructions for use would also be necessary, it would apply only to the relationship of the VHAD to the longitudinal axis of the vehicle, thus permitting recalibration of the VHAD alone and not the whole vehicle. Then, the simple procedure of aligning the "O" mark on the VHAD with the alignment mark on the headlamp will indicate and achieve correct horizontal aim.

This solution exists in section S7.7.5.2(a)(2)(iv), which requires the horizontal indicator to be capable of recalibration over a movement of +/− 2.5 degrees relative to the longitudinal axis of the vehicle to accommodate this necessary adjustment for recalibrating the indicator due to crash damage, or after vehicle repair. Ford and others would make no provision for either recalibration of indicators or headlamp adjustment for reaim. With the May amendments, Standard No. 108 assures that all headlamps can be horizontally aimable throughout the life of the vehicle by requiring adjustability and external mechanical aimer compatibility, or aim verification hardware (VHADs) and aim hardware recalibration features. Ford's system would provide none of these for horizontal aim. For the reasons discussed above, NHTSA denies the petitions by Ford, GM, and MVMA for deletion of VHAD horizontal aimability requirements.

With respect to on-vehicle aiming, section S7.7.5.2(a)(2) requires the VHAD to have four horizontal aim graduation marks in addition to the "O" mark. In GM's view, this is superfluous since all headlamps should be aimed at the "O" mark and thus the additional marks are unnecessary. GM claims that it will manufacture certain headlamps that would not need periodic reaim, and thus there is little likelihood that the aim, if originally set to "O", should deviate in use, even with lamp replacement. GM stated that removal of the other graduations would not affect State aim requirements.

The agency disagrees with GM's statement. Removal of the graduation marks would not permit State aim inspectors to determine whether headlamps are within the State-prescribed tolerances. Thus, any vehicle headlamp not aimed exactly at the "O" graduation would have to be assumed to be misaimed, even though it may in fact be within the aim range allowed by a State. This would increase the cost burden on vehicle owners, who might have to have unnecessary aim adjustments performed in order to satisfy a State that its requirements had been met. The agency also does not agree with GM that headlamps may never need reaim. Since not all persons who replace lamps are familiar with the specific procedures for replacement, many inadvertently misaim headlamps as part of the replacement process. GM has provided no evidence that would cause the agency to believe that eliminating horizontal graduation marks, other than the "O"mark, is appropriate. Therefore, its petition for reconsideration on this issue is denied.

The VHAD's horizontal aim indicator is required to be capable of recalibration over a range of +/−2.5 degrees to accommodate the effects of crash damage and vehicle repair (S7.7.5.2(a)(iv)). GM believes this to be unnecessarily restrictive and recommended that only a means be provided to ensure that the indicator will show "0" when the headlamps are properly aimed after vehicle repair from accident damage. NHTSA observes that the wording used in this section is intended to be specific and not subject to interpretation. The language that GM suggests is subject to interpretation, and therfore may not be enforceable under all circumstances. The agency believes that under GM's language the indicator could always be made to show "0" when properly aimed after vehicle repair since the aiming procedure is to align the headlamp to the "0" mark, thus assuring correct aim. GM's request does not address the need to relocate the "0" mark if its location relative to the longitudinal axis of the vehicle has changed as a result of crash damage or repair. It implies that the "0" mark will be relocated so that it is aligned with the headlamp when the headlamp is properly aimed; however, the headlamp can be properly aimed only when the "0" mark has the same relationship to the vehicle longitudinal axis as originally intended by the vehicle designer, and presumably as it was manufactured. Therefore, recalibration is necessary. The range of +/−2.5 degrees is specified to limit recalibration to the range of required horizontal aimability of the headlamp. The intent was to clearly limit rather than leave open-ended, the range for recalibration, and to make that range meaningful. Therefore, this request is also denied.

Section S7.7.2 requires that aiming shall be performed without the removal of vehicle parts, except for protective covers. GM, MVMA, and Ford asked for a clarification since the section appears to prohibit the use of shims which would be added or removed for the purposes of aiming, and which would not be considered vehicle parts within the meaning of S7.7.2. NHTSA wishes to clarify that the use of shims is acceptable as long as all the necessary shims are provided with the vehicle at the time of sale. Thus, shims would be vehicle parts which would not be added to or removed from the vehicle during an aiming adjustment.

Section S7.7.2.1 requires that all headlamp systems meet certain performance requirements for independence of vertical and horizontal aim adjustments. If such performance is not possible, then an instruction label meeting the requirements of S7.7.5.2(b) shall be placed adjacent to the VHAD. Petitions were received from MVMA and GM on this issue. In GM's opinion, such a label might be so large as to cause a space problem under the hood adjacent to the VHAD. GM also said that underhood labels are not as durable as the alternative location (the owner's manual) for VHAD instructions, and that cost would increase with such a label.

Virtually all current vehicles have aiming screws that permit independent adjustment of horizontal or vertical aim. Given this fact, persons aiming headlamps on future vehicles through non-independent aiming screws would have little reason to be concerned that adjustment of one aiming screw would cause the aim in the other axis to be changed. Because increased misaim could occur through use of other than independent aiming screws, the person performing the aiming should be made aware of the proper manner to assure correct aim. Placing the label next to the VHAD was seen as the best solution. The agency concluded that service personnel would not be likely to refer to the operator's manual when performing an adjustment on new cars that they had performed many times on older ones, and thus may never become aware of the need to exercise caution about the distinctions of new on-vehicle aiming devices.

GM is correct in saying that such a label would be cumbersome if placed adjacent to the VHAD, since a label meeting the requirements of S7.7.5.2(b) would be quite large. A better solution would be to modify the label requirement, to specify a label stating only the caution specific to that particular aiming design. For example, such a label could read: "Caution—adjust horizontal aim first, vertical aim last." Such a label would be physically

smaller and easier to fit adjacent to the aiming screws or VHAD. The agency, therefore, has decided to amend S7.7.2.1 to permit an alternative means of complying with the VHAD aiming instructions of S7.7.5.2(b), to allow a small label adjacent to the aiming device which would have a specific caution about aiming, provided that the label refers the reader to the operator's manual for full instructions, and provided that the full instructions are contained in the manual. This alternative responds to GM's concern. Because the label refers the reader to the manual, and because the requirement mandating information in the operator's manual is a new one, those portions of the rule will not become effective until September 1, 1990.

Section S7.7.3 requires the range of vertical aim of a headlamp installed on a vehicle to be not less than the full range of pitch of the vehicle, determinable in part by "the anticipated effects of suspension sag." Ford commented that the phrase should be eliminated from S7.7.3, since there is no reliable method for anticipating the amount of suspension sag. It further commented that the inclusion of this requirement is unnecessary and unreasonable because such suspension changes would likely occur equally in the front and rear and thus would have little effect on pitch angle. Nor does it know of any method to determine the effects of loadings, age, environment, and road characteristics on suspension sag.

Standard No. 108's requirement for a +/−4 degree pitch range for aiming screws was intended, and continues, to take into account the myriad factors that could cause a vehicle to need a vertical aiming range substantially beyond that necessary at the time of vehicle manufacture. NHTSA believes that for the performance oriented requirement now implemented, it is still desirable to account for anticipated sag from aging springs. Although the vehicle manufacturer would be able to give the design value assigned to accommodate the sag, the actual sag that a vehicle might exhibit could be different, as Ford claims. Therefore, verification of this added range to account for sag is not practicable since it cannot be related to actual sag during the compliance testing. Accordingly, Ford's request for deletion of "the anticipated effects of spring sag" is granted.

Ford requests that the requirement for vertical air range in S7.7.3 be designated as a "designed to conform" requirement. Ford claims that since the design of headlamp aiming and mounting systems must be accomplished in the early stages of vehicle design, prototype vehicles are not available for testing to determine the range of pitch angle. It believes that designing the system to comply with the pitch range requirement in every manufactured vehicle may be impracticable. NHTSA believes that the vehicle manufacturing industry has the capability through computer simulation and its vast experience at designing and manufacturing vehicles to solve this design problem in many practicable ways. It is unreasonable to believe that vehicle manufacturers cannot do so, as it is also unreasonable to actually manufacture vehicles whose headlamps cannot be aimed throughout the range of pitch that a vehicle will experience in actual service. Ford's request is denied.

Ford requests a clarification that the requirement of S7.7.3 pertains only to "static pitch". Ford correctly believes that the range should apply to only static pitch situations. This was NHTSA's intent. Therefore, the word "static" has been inserted in S7.7.3, between the words "The installed range of" and "pitch angle".

In response to the interim final rule (Notice 10), several commenters stated that the torque deflection performance requirements specified by S7.7.5.1(a) is unclear with respect to the means for determining performance. The agency is revising S7.7.5.1(a) to incorporate aspects of the language on torque deflection performance contained in a forthcoming revision of SAE J1383 *Performance Requirements for Motor Vehicle Headlamps*, and information received from Ford and Hopkins Manufacturing Corporation. Ford provided data which showed that the length of the lever arm used to apply the torque affects the angular deflection. The Hopkins information provides the lever arm length for the various adapter/aimer combinations in use, and those lengths are used as minima in the text of the standard. NHTSA believes this revision will eliminate the possibility of errors in determining compliance, and the need for NHTSA interpretations relating to such testing.

Legibility requirements of the VHAD (S7.7.5.2(a)(1)(vi)) and S7.7.5.2(a)(2)(iii)) needs clarification to be more pertinent. They specify the legibility of VHAD indicators at the top of the radiator. Ford recommends that they be rewritten to specify that legibility be measured at the top of the graduations. Ford also believes that these legibility requirements should not apply to the remote reading indicator of S7.7.5.2(a)(1)(iii). However, since neither the location nor the nature of a remote reading indicator is restricted, such devices could be located under the hood, and thus the need for legibility still exists. Therefore, while NHTSA agrees with Ford as to the location for measuring the illumination (at the graduation), it disagrees with Ford's comment on restricting legibility. Appropriate changes are made to the language of S.7.7.5.2 (a)(1)(vi) and (a)(2)(iii) to change the location for measuring the illumination.

As noted above, neither the location nor the nature of the remote reading indicator is restricted, and such indicators could be located in the engine compartment as well as in other vehicular locations such as the instrument panel. The inclusion of a remote reading indicator was in response to Ford's comment to the initially proposed rule to permit an indicator that might be readable by the driver of the vehicle. However, questions have arisen with respect to S7.7.5.2(a)(iii) as to whether certain designs are direct or remote reading indicators. NHTSA's intent was narrow. A direct reading indicator was intended to be an indicator mounted on a headlamp or its mounting hardware. A remote reading indicator was intended to be, as Ford had envisioned, located in the instrument panel. Standard No. 108 can be interpreted as allowing a greater latitude for locations. It appears to allow both direct and indirect reading analog indicators that are not remotely mounted, both direct and indirect reading analog indicators that are remotely mounted, and the digital equivalents of these four variants. Thus, to resolve any questions which may arise, the agency is amending section S.4 to add definitions of direct and remote reading indicators.

Issues Relating to Tests and Procedures

Ford continues to believe that S8.9, the vibration test of Standard No. 108, should be deleted, for the same reasons as stated in its comment to Notice 5 of this docket. It now recommends that the present vibration requirements apply to only heavy duty vehicles (over 80 inches or more in overall width), and that the SAE J575 JUL83 vibration requirements apply to vehicles less than 80 inches wide. Ford claims that the vibration levels of the present requirement are much higher than measured on the road by test vehicles. It also claims that the vibration levels in SAE J575 JUL83 are shown to be adequately severe in the frequency ranges of concern, compared to the data from those test vehicles. It

submitted data in substantiation of its position.

NHTSA is not convinced by the Ford data comparison which includes only vibration ranges and intensities. The intent of a vibration test is to assure that lighting devices are resistant to failure from vehicle vibration. The comparison of vibration range and intensity is only part of determining a proper specification for such a test procedure. The analysis of lamp failures from the field and the replication of those failures in the laboratory are also a necessary part of the development of a proper test procedure. NHTSA's use of the present Standard No. 108 vibration test procedure has shown that failures in the test are also found in the field. The correlation between lab and field is necessary. Ford has not demonstrated that its suggested test would be any more successful in finding poorly designed lighting devices. It only has shown that its test is less severe. NHTSA remains to be convinced that a more valid vibration test exists than that already required by the standard. Therefore, Ford's petition is denied.

Ford also objects to the sealing test of S8.10, finding its conditions are excessively stringent, expensive to perform, and burdensome. It recommends a simpler 10 pounds per square inch gauge (psig), pressure test and 10 inches of mercury vacuum test. Ford states that it has used this procedure for many years for determining lamp integrity in both development testing and in quality checks at manufacturing facilities. However, NHTSA believes that safety demands integrity of lamps not only on the day they are manufactured but while they are in service. Such basic pressure and vacuum tests do not exercise lamps under simulated conditions that reflect real world conditions. High temperatures are a normal environment for headlamps, as are low temperatures. Under those conditions, headlamps are often energized and often rapidly cooled by rainwater, causing thermal shock conditions. The rapid heating and cooling are fully intended to test the integrity of the sealing method used.

Today's headlamps no longer need to be hermetically sealed with an enclosed inert environment since such extremes are not necessary for survival of the filaments in halogen capsules. As a consequence, lenses and reflectors are adhesively bonded, which does not provide the same quality of seal as the glass to glass welding (flame sealing) used on non-halogen headlamps. Unless the design can be proven to be capable of withstanding the true vehicle environment and surviving without performance loss, it should have a seal test to prove its hermeticity. The selection of the sealing performance test is now an option of the lamp designer (S7.4(h)), choosing whether the lamp will be truly sealed by meeting S8.10, or if not, then by meeting the same requirements as unsealed headlamps (replaceable bulb types). In implementing this test requirement, NHTSA applied it to only integral beam headlighting systems, since this category of headlamps is intended to replace "sealed" beam headlamps.

An area of concern is that the present procedure may cause some laboratory safety problems for those manufacturers which may design high voltage headlighting systems known today as High Intensity Discharge systems. NHTSA will consider factual information documenting the bases for these laboratory safety concerns, if they exist, and will consider modification of those procedures to the extent that the same test results can be achieved. NHTSA is also interested in learning if such high voltage systems would also pose safety hazards to vehicle owners and service personnel who may have to deal with such equipment in less than laboratory conditions.

Although the agency is not in favor of a less stringent sealing test, it realizes, as Ford points out, that the procedure might need changes to accommodate high test voltages. For now, however, the procedure remains in effect and Ford's request is denied.

Issues Relating to Equipment Marking

Comments were received from Ford, GM, and MVMA on the headlamp lens marking requirements of S7.2 and the standardized replaceable light source marking of S7.6(i). Ford stated that it is unclear whether the term "manufacturer" refers to only the assembler of the device or refers also and alternatively to any manufacturer of a vehicle equipped with such a device. Ford believes the latter is the more reasonable and reflects current industry practice. Ford would like this clarified to state that either the lamp manufacturer's or vehicle manufacturer's name or trademark shall be marked on the device. Ford also requests that these requirements also state that nothing in it shall be construed to authorize the use of such names or trademarks without the owner's consent. While NHTSA's observations of the marking of headlamps does not entirely reflect that current industry practice espoused by Ford, it does agree that the requirement can be made explicit to the advantage of all involved. The agency adopts the language requested by Ford for S7.2, and S7.6(i).

Miscellaneous Issues

In the reprinting of the Standard in May, numerous typographical errors occurred. NHTSA has corrected these errors, both in this notice and Notice 9. It has also used this notice to paragraph and designate paragraphs within sections where such appeared to contribute to the clarity of the standard.

VW found the final rule confusing in that it did not incorporate the tables and figures remaining in effect. It asked that the standard be republished in its entirety with the tables and figures, or that they be deleted, or that the agency publish a list of figures and tables remaining in effect.

To address VW's concern, NHTSA states that all numbered figures and tables remain in effect. All unnumbered figures within the text of Standard No. 108 as in effect before June 8, 1989, have been incorporated as text.

GM states that there is potential for conflict between the requirements of S5.5.8 and S5.5.9. S5.5.8 provides for the optional illumination of the lower beam headlamps on certain headlighting systems, while S5.5.9 requires that only those lamps necessary for lower beam photometrics be so wired to be energized and only those lamps necessary for meeting upper beam photometric shall be illuminated. Clearly these sections conflict. GM recommends adding the phrase "Except as provided in S5.5.8," to the beginning of S5.5.9. The agency agrees and grants this request.

Sealed beam headlighting wattages (S7.3.5 and S7.3.6) were unintentionally omitted in the final rule, as called to the agency's attention by MVMA. They have been reinserted into the standard.

Impacts

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" nor significant under Department of Transportation regulatory policies and procedures. It corrects and amplifies a regulation previously adopted. The final rule amended by this rule was determined to be significant, and a Regulatory Evaluation (RE) was prepared and placed in the Docket. The conclusions of the evaluation are not altered by the amendments adopted in this notice.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. It is not anticipated that the rule will have a significant effect upon

the environment, for the reasons expressed in the final rule which this amends.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and replacement headlamps should be minimally impacted by the substitution of one type of headlighting system for another.

The equipment marking, vehicle labeling, and operator manual information requirements discussed in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism", and it has been determined that the rule does not have sufficient federalism implications to warrant preparation of a federalism assessment. To the extent that a State law covering the same aspect of performance as the rule is not identical to it, it will be preempted, pursuant to the specific preemption provisions of 15 U.S.C. 1392(d). However, the agency is not aware of any State laws that conflict with the rule.

Effective Dates

Because of the need to relieve design restrictions and encourage innovation, it is hereby found for good cause shown that an effective date earlier than 180 days after publication of the final rule is in the public interest, and the amendment is effective 30 days after its publication in the Federal Register. However, those portions of S7.7.5.2.1 and S7.7.5.2(b)(3) which impose requirements of adding a label to the vehicle, referring the reader to further information in a vehicle operator manual under the circumstances prescribed therein become effective September 1, 1990.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Incorporation by reference.

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50, and 501.8.

§ 571.108 [Amended]

2. Definitions of "Beam contributor", "Direct reading indicator", "Remote reading indicator", and "Vehicle headlamp aiming device" are added to section S4 in alphabetical order to read as follows:

* * * * *

"Beam contributor" means an indivisible optical assembly including a lens, reflector, and light source, that is part of an integral beam headlighting system and contributes only a portion of a headlamp beam.

* * * * *

"Direct reading indicator" means a device that is mounted in its entirety on a headlamp or headlamp aiming or headlamp mounting equipment, is part of a VHAD, and provides information about headlamp aim in an analog or digital format.

* * * * *

"Remote reading indicator" means a device that is not mounted in its entirety on a headlamp or headlamp aiming or headlamp mounting equipment, but otherwise meets the definition of a direct reading indicator.

* * * * *

"Vehicle headlamp aiming device" or "VHAD" means motor vehicle equipment permanently installed on a motor vehicle by the manufacturer of the vehicle, which is used for determining the horizontal and vertical aim of headlamps.

3. Section S5.1.1.8 is amended by deleting the word "and" between the words "photometric" and "minimum".

4. In section S.5.1.1.11, "SAE J585c" is corrected to read "SAE J586c".

5. In section S5.5.8, the reference to "paragraph S7.4(a)(2)" is corrected to read "section S7.4(a)(1)(ii)."

6. Section S5.5.9 is revised to read:

S5.5.9 Except as provided in section S5.5.8, the wiring harness or connector assembly of each headlamp system shall be designed so that only those light sources intended for meeting lower beam photometrics are energized when the beam selector switch is in the lower beam position, and that only those light sources intended for meeting upper beam photometrics are energized when the beam selector switch is in the upper beam position.

7. Section S5.5.10 is amended by deleting paragraph (b), and redesignating paragraphs (c), (d), and (e), as paragraphs "(b)", "(c)", and "(d)" respectively.

8. Section S7.2 is revised to read:

S7.2 (a) The lens of each original and replacement equipment headlamp, and of each original equipment and replacement equipment beam contributor manufactured on or after December 1, 1989, shall be marked with the symbol "DOT" either horizontally or vertically which shall constitute the certification required by 15 U.S.C. 1403.

(b) The lens of each headlamp and of each beam contributor manufactured on or after December 1, 1989, to which paragraph (a) of this section applies shall be marked with the name and/or trademark registered with the U.S. Patent and Trademark Office of the manufacturer of such headlamp or beam contributor, or its importer, or any manufacturer of a vehicle equipped with such headlamp or beam contributor. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

(c) Each headlamp and beam contributor to which paragraph (a) of this section applies shall be marked with its voltage and with its part or trade number.

9. In section S7.3.2.(a)(1), a paragraph "4.1.2" is added between paragraphs 4.1.1 and 4.1.3.

10. The text of section S7.3.5 is designated section "(a)". A sentence designated section (b) is added to read:

(b) The maximum wattage at 12.8 volts (design voltage): 65 watts on upper beam, and 55 watts on lower beam.

11. The text of section S7.3.6 is designated section "(a)". A sentence designated section (b) is added to read:

(b) The maximum wattage at 12.8 volts (design voltage): 70 watts on upper beam, and 60 watts on lower beam.

12. Section S7.3.7(c) is revised to read:

(c) SAE Standard J1383 APR85 *Peformance Requirements for Motor Vehicle Headlamps*, Sections 2.4, 2.5, 2.6, 4.1, 4.1.4, and 5.1.4.

13. Section S7.3.7(e)(4) is revised to read: "Sections 5.1.1.1 and 5.1.2.3 do not apply."

14. Section S7.3.7(e)(7) is revised to read:

(e)(7) Section 5.1.6 is retitled "Retaining Ring/Aiming Ring Tests". The phrase "92×150 mm * * * 0.340 in (8.6 mm)" is added at the end of the table for flange thickness. The sentence beginning "The fastening means" is deleted.

15. In section S7.3.8(b), a paragraph "4.1.2" is added between paragraphs "4.1.1 and 4.1.3".

16. In section S7.4(a)(1)(ii), the phrase "and not to the upper beam test point" is revised to read "and not to the upper beam headlamp, and the upper beam test point".

17. In section S7.4(b)(2), the word "base" is corrected to read "beam".

18. In section S7.4(c), the word "filament" is deleted and in lieu thereof the words "light source" added.

19. In section S7.4(d), and the last sentence of section S7.5(c), the word "point" is corrected to read "points".

20. In section S7.4(e), the reference to "S7.4(a)(1)" is deleted and replaced with the words "paragraphs (a)(1) or (a)(3) of this section".

21. In section S7.4(f), the phrase "paragraph S7.4(a)" is revised to read "paragraph (a) of this section".

22. In section S7.5(b), the phrase "subsections (c) through (f) below" is revised to read "paragraphs (d) and (e) of this section".

23. The first sentence of section S7.5(c) is revised to read:

(c) The test requirements of sections 4.1, 4.1.4, and 5.1.4 of SAE J1383 APR85, using the photometric requirements specified in paragraphs (d) and (e) of this section. * * *

24. Section S7.5(d)(1) is revised to read:

(d)(1) Headlamps designed to conform to the external aiming requirements of S7.7.5.1 shall have no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustment of each reflector.

25. In section S7.5(e)(1), the introductory words "There shall be" are deleted and in lieu thereof the words "Headlamps designed to conform to the external aim requirements of S7.7.5.1 shall have" are added.

26. In section S7.5(e)(2)(ii)(B), the word "lower" is corrected to read "upper".

27. In secton S7.5(i), the phrase "paragraphs S7.4 (k) and (l), except that the sentence in (k)" is revised to read "sections S.4 (h) and (i), except that the sentence in (h)".

28. In section S7.6(d), the number "100" is corrected to read "1000".

29. Section S7.6(j) is revised to read:

(j) Each standardized replaceable light source manufactured on or after December 1, 1989, shall be marked with the symbol DOT and with a name or trademark in accordance with S7.2. In addition, the base of each such light source shall be marked with its HB Type designation.

30. In section S7.7.1, the word "vertical" in corrected to read "vehicle".

31. In section S7.7.2.1, the first sentence is designated paragraph "(a)". The second sentence is deleted and the following sentence, designated paragraph "(b)", is added in lieu thereof:

(b) If the performance specified in paragraph (a) of this section is not achievable, the requirements of S7.7.5.2(b)(3) apply, except that if the aiming mechanism is not a VHAD, the requirements specific to VHADs are not applicable, and the instruction shall be specific to the aiming mechanism installed.

32. In the third sentence of section S7.7.3, the word "static" is added between the words "of" and "pitch", the word "truck" is corrected to read "trunk", and the words "suspension sag and" are deleted.

33. In section S7.7.4, the first "not" is deleted.

34. In section S7.7.5.1(a), the first sentence is deleted, and the following sentences are added in lieu thereof:

(a) The aim of the headlamps in each headlamp system, other than a headlamp system designed to conform to section S7.3, that is designed to use such external aiming devices, shall not deviate more than 0.30 degree when a downward torque of 20 lb.-in. (2.25 N–m) is removed from the headlamp in its design operating position. The downward force used to create the torque shall be applied parallel to the aiming reference plane, through the aiming pads, and displaced forward using a lever arm such that the force is applied on an axis that is perpendicular to the aiming reference plane and originates at the center of the aiming pad pattern (see Figures 4–1 and 4–3). for headlamps using the aiming pad locations of Group 1, the distance between the point of application of force and the aiming reference plane shall be not less than 6.625 in. (168.3 mm) plus the distance from the aiming reference plane to the secondary plane, if used (see section S7.7.5.1(d)(1)). For headlamps using the aiming pad locations of Group II, the distance between the point of application of force and the aiming reference plane shall be not less than 6.609 in. (167.9 mm) plus the distance from the aiming reference plane to the secondary plane, if used. For headlamps using the nonadjustable Headlamp Aiming Device Locating Plates for the 146 mm diameter, the 176 mm diameter, and the 92×150 mm sealed beam units, the distance between the point of application of force and the aiming plane shall, respectively, be not less than 6.984 in. (177.4 mm), 6.937 in. (176.2 mm), and 7.625 in (193.7 mm).

35. In section S7.7.5.2(a)(1)(vi), and section S7.7.5.2.(a)(2)(iii), the word "radiator" is deleted and the word "graduation" added in lieu thereof.

36. In section S7.7.5.2(b), the first two sentences are designated as paragraph (b)(1); the final sentence is designated as paragraph (b)(2); and a new paragraph (b)(3) is added to read as follows:

(b)(3) Should the mechanism not meet the requirements of S7.7.2.1, on each motor vehicle manufactured on or after September 1, 1990, a cautionary label shall be placed adjacent to the mechanism stating the caution and including either the reason for the caution or the corrective action necessary. Each such label shall also refer the reader to the vehicle operator's manual for complete instructions. Each such vehicle shall be equipped with an operator's manual containing the complete instructions appropriate for the mechanism installed.

37. In section S7.7.5(c)(1), the words "The headlamp assembly (the headlamp(s) and the integral or separate VHAD mechanism)", are removed and the phrase "The headlamp assembly (the headlamp(s), and the VHAD(s))" is inserted in their place.

38. In section s7.7.5.2(c)(3), paragraphs (3)(iii), (3)(iv), (3)(v), (3)(vi), and (3)(vii) are redesignated as paragraphs "(3)(ii)(A)", "(3)(ii)(B)", "(3)(ii)(C)", "(3)(ii)(D)", and "(3)(ii)(E)", respectively.

39. The first sentence of section S8.4(b) is amended by inserting the word "in" between the words "and" and "its".

40. In section S8.7, the penultimate sentence is corrected by changing the number "20" to read "23".

41. In section S8.10, the fourth sentence is corrected by changing the number "69" to read "70".

42. In sections S10 (a) and (b), the date in the reference to Standard J1383 "APR83" is corrected to read "APR85".

Issued on February 2, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–2945 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 55, No. 27
Thursday, February 8, 1990

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-06-AD]

Airworthiness Directives; Israel Aircraft Industries (IAI) Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Model 1125 Westwind Astra series airplanes which would require repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. This proposal is prompted by a damage tolerance analysis that revealed cracks may develop in the horizontal stabilizer hinge fitting lugs. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer assembly.

DATES: Comments must be received no later than April 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-06-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Astra Jet Corporation, Technical Publications, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-06-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The Civil Aviation Administration of Israel (CAAI), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Israel Aircraft Industries (IAI) Model 1125 Westwind Astra series airplanes. Damage tolerance analysis by the manufacturer has revealed that cracks may develop in the horizontal stabilizer hinge fitting lugs. This condition, if not corrected, could lead to reduced structural integrity of the horizontal stabilizer assembly.

Westwind Astra has issued Service Bulletin 1125-55-017, dated October 16, 1989, which describes procedures for repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. The CAAI has classified this service bulletin as mandatory.

This airplane model is manufactured in Israel and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings, in accordance with the service bulletin previously described.

It is estimated that 28 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibiliity Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—(AMENDED)

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI), Ltd.: Applies to all Model 1125 Westwind Astra series airplanes, certificated in any category. Compliance is required as indicated unless previously accomplished.

To detect cracks in the outer lugs of the horizontal stabilizer hinge fitting, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 150 hours time-in-service, perform a visual inspection of the outer lugs of the horizontal stabilizer hinge fitting, in accordance with Westwind Astra Service Bulletin 1125–55–017, dated October 16, 1989.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 200 hours time-in-service.

C. If cracks are found, prior to further flight, replace the hinge fitting, in accordance with Westwind Astra Service Bulletin 1125–55–017. Repeat the inspection required by paragraph A., above, at intervals not to exceed 200 hours time-in-service.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Astra Jet Corporation, Technical Publications, P.O. Box 10086, Wilmington, Delaware 19850. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc 90–2914 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–275–AD]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 series airplanes, which would require replacement of the thrust reverser synchronizing bell crank with a new bell crank. This proposal is prompted by fatigue testing of the thrust reverser synchronizing bell crank which revealed that these bell cranks have a limited service life and must be replaced upon accumulation of 3,000 landings. This condition, if not corrected, could lead to failure of the thrust reverser linkage.

DATES: Comments must be received no later than April 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–275–AD, 17900 Pacfic Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–275–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on AMD-BA Model Mystere Falcon 900 series airplanes. Fatigue testing of the thrust reverser synchronizing bell crank, Part Number F900HD3200240A2, has revealed that the bell crank has a limited service life and should be replaced with a new bell crank prior to the accumulation of 3,000 landings. This condition, if not corrected, could lead to the failure of the thrust reverser linkage.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same tye design registered in the United States, an AD is proposed which would

require replacement of the thrust reverser synchronizing bell crank. Replacement bell cranks, Part Number F900HD3200240A2, are life limited to 3,000 landings, and repetitive replacement would be required prior to the accumulation of 3,000 total landings since new.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for parts is estimated to be $12,500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $505,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD-BA): Applies to all Model Mystere Falcon 900 series airplanes equipped with thrust reverser synchronizing bell crank, Part Number F900HD3200240A2, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the thrust reverser door actuating system, accomplish the following:

A. Prior to the accumulation of 3,000 landings on the thrust reverser synchronizing bell crank, Part Number F900HD3200240A2, or within the next 250 landings after the effective date of this AD, which occurs later, and thereafter at intervals not to exceed 3,000 landings, replace the bell crank, which is life limited to 3,000 landings, in accordance with the manufacturer's maintenance manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level or safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenace Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2915 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–05–AD]

Airworthiness Directives; Boeing Model 737–300 and –400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737–300 and –400 series airplanes, which would require modification of certain evacuation slides to ensure automatic inflation upon deployment. This proposal is prompted by reports of evacuation slides that failed to automatically inflate when tested. This condition, if not corrected, could delay the emergency evacuation of passengers while slide inflation is manually initiated, or could result in injury to passengers who inadvertently utilize an exit whose slide has not automatically inflated.

DATES: Comments must be received no later than April 12, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–05–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terrel W. Rees, Airframe Branch, ANM–120S, telephone (206) 431–1941. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comment received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–05–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

During routine production testing of evacuation slides installed on Boeing Model 737–300 and –400 airplanes, it was discovered that the Air Cruisers Company slides installed at the forward right-hand emergency exit failed to inflate automatically with acceptable reliability. Within a three-month interval, there were nine instances when the slides failed to automatically inflate. In these cases, the initial slide certification requirements defined in Technical Standard Order (TSO) C69b and Federal Aviation Regulations (FAR) Section 25.809 for automatic inflation have not been maintained. The consequence of this deterioration in evacuation slide reliability is an increased likelihood that a slide installed at this exit will not automatically inflate as required in an emergency. This would result, as a minimum, in a delay during an emergency evacuation while the slide inflation is manually initiated. The possibility also exists that, due to the expectation of an automatically inflated slide, passengers would unintentionally evacuate through this exit, resulting in otherwise preventable injuries.

The FAA has reviewed and approved Air Cruisers Service Bulletin 103–25–17, dated November 10, 1989, which describes a modification to the affected slides that is intended to provide a more positive means of actuating the automatic inflation mechanism of these slides. This modification consists of adding a frangible link between the inflation bottle and the slide body, so that the weight of the slide as it is deployed assists in actuating the bottle's inflation valve. The service bulletin describes modifications of both right-hand and left-hand forward slides, which are the same part number units.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the affected slides in accordance with the service bulletin previously described.

There are approximately 800 Model Boeing Model 737–300 and –400 series airplanes of the affected design in the worldwide fleet. It is estimated that 379 airplanes of U.S registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification kits are offered by Air Cruisers Company at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $121,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" undfer Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List Subjects in 14 CFR Part 9

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737–300 and –400 series airplanes, equipped with Air Cruisers Company forward door evacuation slides identified in paragraph 1A of Air Cruisers Bulletin 103–25–17, dated November 10, 1989, certificated in any category. Compliance required within 3 years after the effective date of this AD, unless previously accomplished.

To ensure that forward door evacuation slides will automatically inflate when needed, accomplish the following:

A. Modify affected slides by installing a frangible link in accordance with Air Cruisers Service Bulletin 103–25–17, dated November 19, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2916 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–178–AD]

Airworthiness Directives; McDonnell Douglas Models DC–9–10, –20, –30, –40, –50, and C–9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws an NPRM which proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9 series airplanes, which would have

required repetitive inspections to detect cracks in various longerons located in the upper fuselage over the wing on certain airplanes. Since issuance of the proposal, the FAA has issued a separate AD which includes, as part of its requirements, the inspections that would have been required by this action.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5320.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation regulations to add a new airworthiness directive, applicable to certain McDonnell Douglas DC-9 series airplanes, was published in the **Federal Register** on January 17, 1989 (54 FR 1726). The proposal would have required repetitive aided visual inspections to detect cracks in certain longerons on airplanes that have accumulated more than 45,000 landings. That action was prompted by reports of fuselage skin and longeron cracks found in the upper fuselage over the wing. This condition, if not corrected, could result in degradation of the structural integrity of the fuselage and lead to rapid decompression of the airplane.

Since issuance of that proposal, the FAA has issued AD 88-24-08-R2, Amendment 39-6469 (55 FR 1002; January 11, 1990), which includes, among other things, a requirement for visual inspections identical to those proposed previously by this action. Accordingly, the FAA has determined that the proposed amendment is not necessary, and the NPRM is hereby withdrawn.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another Notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking, it is neither a proposed nor final rule and, therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

2. By withdrawing the Notice of Proposed Rulemaking, Docket 88-NM-178-AD, published in the **Federal Register** on January 17, 1989 (54 FR 1726), FR Doc. 89-931.

Issued in Seattle, Washington, on January 31, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2919 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-274-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposed to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which currently requires repetitive functional testing of the wing and engine anti-ice control system. This action would require a modification of the airplane wing and engine cowl anti-ice control and indication system, which would serve to terminate the requirement for periodic functional testing required by the existing AD. This proposal is prompted by the development of a modification which eliminates the potential for false system annunciation being provided to the flight crew. This condition, if not corrected, could result in an undetected failure of the anti-ice system which could ultimately result in unacceptable ice build up on the wings or engine inlets.

DATES: Comments must be received no later than April 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-274-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way south, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington 98168; telephone (206) 431-1947.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-274-AD." The post card will be date/time stamped and returned to the commenter.

Discussion On December 30, 1987, the FAA issued AD 88-01-08, Amendment 39-5827 (53 FR 493; January 8, 1988), to require repetitive functional testing of the wing and engine anti-ice control

system on all Boeing Model 757 series airplanes at 300-hour intervals. That action was prompted by reports of problems associated with the switches used in the anti-ice control panels, and the inadequacy of the anti-ice circuit logic that could result in the flight crew not being warned that the anti-ice system had not been activated. This could occur as a result of incomplete latching of the switch and/or switch contamination. This condition, if not corrected, could result in unacceptable ice build-up on the wings or engine inlets.

Since issuance of the above AD, Boeing has issued Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989, which provides instructions for a modification of the wing and engine anti-ice control and indication system which would eliminate the potential for false system annunciation to the flight crew and, thus, terminate the need for performing periodic functional tests. The FAA has reviewed and approved this service bulletin.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would superseded AD 88–01–08 with a new AD that would also require modification and testing of the airplane wing and engine cowl anti-ice and indication system, in accordance with the service bulletin previously described. Installation of the modification specified in this AD would constitute terminating action for the periodic inspections currently required by AD 88–01–08.

There are approximately 205 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 128 airplanes of U.S. registry would be affected by this AD, that it would take an average of 17 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification kits would be furnished by the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $87,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to be by the Administrator, The Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449 January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88–01–08, Amendment 39–5827 (53 FR 493; January 8, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent undetected failure of the wing and engine anti-ice control and indication system that could result in build-up of ice on the wings and engine inlets, accomplish the following:

A. Within the next 300 hours time-in-service after February 4, 1988 (the effective date of Amendment 39–5827), perform functional testing of the wing and engine cowl anti-ice control system, in accordance with Section III Part I of Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989. Repeat this functional test at intervals not to exceed 300 hours time-in-service.

Note: This is the same functional test that was required by AD 88–01–08.

B. Within the next 3,000 hours time-in-service after the effective date of this amendment, modify and test the wing and engine cowl anti-ice control and indication system in accordance with Section III Parts II, III, IV, V, VI, and VII, as applicable, of Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989. Completion of this modification constitutes terminating action for the requirement for periodic testing required by paragraph A, above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 30, 1990.

Leory A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2918 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–03–AD]

Airworthiness Directives; Sud-Service Caravelle Model SE 210 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Sud-Service Caravelle Model SE 210 series airplanes, which would require repetitive visual; or repetitive visual, eddy current, and magnetic particle inspections to detect cracks and shearing of fasteners in the wing-to-fuselage junction components; and repetitive visual and dye-penetrant inspections of various components of the fuselage lower section, and repair, if

necessary. This proposal is prompted by fatigue testing by the manufacturer and in-service experience which have identified fatigue cracks in certain wing-to-fuselage junction fittings and in the fuselage lower section. This condition, if not corrected, could result in reduced structural integrity of the wing-to-fuselage junction structure.

DATES: Comments must be received no later than April 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-03-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Rue de Bayonne, 31060, Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-03-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Sud-Service Caravelle Model SE-210 Model series airplanes. Results of fatigue testing by the manufacturer and in-service experience have identified fatigue cracks and shearing of attachments in the wing-to-fuselage junction fittings at Frames 31 and 35, and in the fuselage beams and fittings under Rib 52. Cracks found in fittings 210.12.52.382/383 and 210.22.53.012 at the attachment level can be repaired. Cracks found in these fittings outside the attachment areas are stress-corrosion cracks and replacement of fittings is required. This condition, if not corrected, could result in reduced structural integrity of the wing-to-fuselage junction structure.

Sud-Service has issued Service Bulletin 53-51, Revision 6, dated July 31, 1986, which describes procedures for repetitive visual; or repetitive visual, eddy current, and magnetic particle inspections to detect cracks and sheared bolts in the wing-to-fuselage junction fittings at Frames 31 and 35, and repair, if necessary. Sud-Service has also issued Service Bulletin 53-52, Revision 7, dated March 22, 1988, which describes procedures for repetitive visual and dye penetrant inspections of the fuselage lower section beam under Rib 52, the attachment fittings at the rear section of Rib 52, and the pick-up fittings between the beam under Rib 52 and the canted frames at Frame 30. The DGAC has classified these service bulletins as mandatory, and has issued Airworthiness Directive 86-004-061(B)R2 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual; or repetitive visual, eddy current, and magnetic particle inspections of fittings at Frames 31 and 35 in the wing-to-fuselage junction; repetitive visual and dye-penetrant inspections of fittings in the fuselage beam under Rib 52, to detect cracks and shearing of fasteners; and repair, if necessary, in accordance with the service bulletins previously described.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 96 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 amd 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Sud-Service (Formerly Sud Aviation): Applies to all Sud-Service Caravelle Model SE 210 Model series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect fatigue cracks in the wing-to-fuselage junction and fuselage lower section components, accomplish the following:

A. Prior to the accumulation of 29,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, perform one of the following inspections in accordance with Sud-Service Service Bulletin 53-51, Revision 6, dated July 31, 1986:

1. Visual inspection of the wing-to-fuselage junction fittings at Frames 31 and 35, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 2,500 landings; or

2. Visual and eddy current inspection of the wing-to-fuselage junction fittings at Frames 31 and 35, and a magnetic particle inspection of all removed horizontal bolts, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 7,500 landings.

B. If cracks or sheared bolts or rivets are detected during the inspection required by paragraph A., above, replace with serviceable parts prior to further flight, in accordance with Sud-Service Service Bulletin 53–51, Revision 6, dated July 31, 1986. Repeat inspections thereafter at intervals specified in paragraph A., above.

C. Prior to the accumulation of 29,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings, perform a visual and dye penetrant inspection of the fuselage lower section beam under Rib 52, the attachment fittings at the rear section of Rib 52, and the front pick-up fittings between the beam under Rib 52 and the canted frames at Frame 30, in accordance with Sud-Service Service Bulletin 53–52, Revision 7, dated March 22, 1988.

D. If sheared-off attachment hardware is detected during the inspection required by paragraph C., above, prior to further flight replace with serviceable parts in accordance with the Structural Repair Manual, Chapter 57–1–33. Repeat the inspection identified in paragraph C., above, at intervals not to exceed 2,500 landings.

E. If cracks are detected during the inspection required by paragraph C., above, in Fittings 210.12.52.382/383 and 210.22.53.012 at the attachment level, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region. Repeat the insepction identified in paragraph C., above, at the interval to be approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. If cracks are detected during the inspection required by paragraph C., above, in Fittings 210.12.52.382/383 and 210.22.53.012 outside the attachment areas, prior to further flight, replace with new fittings, in accordance with Sud-Service Bulletin 52–52, Revision 7, dated March 22, 1988. Repeat the inspection identified in paragraph C., above, at intervals not to exceed 2,500 landings.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2917 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC51

[Regs. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Interim Assistance Provisions

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing rules to reflect changes in interim assistance policy resulting from section 9110 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, which amended section 1631(g) of the Social Security Act (the Act). This provision extends interim assistance reimbursement (IAR) to assistance provided by a State to an individual for a month or months the individual's supplemental security income (SSI) benefits and/or federally administered State supplementary payments are suspended or terminated, if it is determined subsequently that the individual was eligible for such benefits or payments for such months. We are also proposing to clarify our policy to provide that a State may be reimbursed only on a prorated basis for assistance provided to an individual for the initial month of eligibility for SSI benefits and for the month his or her SSI benefits are reinstated afer a period of suspension or termination.

DATES: To be sure that your comments are considered, we must receive them no later than April 19, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1758.

SUPPLEMENTARY INFORMATION: Section 1631(g) of the Act, before amendment, authorized the Social Security Administration (SSA) to make the first payment of SSI benefits and/or State supplementary payments (including retroactive payments, if any) due an individual to a State or political subdivision as reimbursement for interim assistance furnished on behalf of the individual by the State if: The State had entered into an IAR agreement with SSA; the individual had signed an IAR authorization form approved by SSA and the State permitting such payment of benefits to the State; and the individual had received interim assistance during the period his or her SSI application was pending. Under these proposed rules, SSA, upon written authorization by an individual, will reimburse the State from the retroactive SSI benefits and/or State supplementary payments due the individual for interim assistance provided to the individual while the individual's SSI benefits and/or State supplementary payments were suspended or terminated, if it is determined subsequently that he or she was eligible for such benefits and/or payments for such month or months (the posteligibility period). Reimbursement will include only amounts payable for months for which an authorization is effective. A separate IAR authorization for each posteligibility period is required for this reimbursement to enable the SSA district or branch office to distinguish the posteligibility authorization from a prior authorization relating to the individual's initial claim.

In order to avoid confusion about what constitutes interim assistance for months when the SSI benefit is subject to proration, we have modified the definition of interim assistance in § 416.1902. The change makes it clear that interim assistance means assistance furnished by the State beginning with the day an individual applies and is eligible for SSI benefits, or with the day for which SSI eligibility is reinstated after a period of suspension or termination, rather than with the month for which his or her eligibility begins. Consequently, under this definition, the assistance amount

payable by a State for a full month will be prorated to determine the amount of IAR in the same fashion as is the SSI benefit under § 416.421.

This clarification in our interim assistance policy will eliminate the ambiguity under which some States have not prorated the assistance amount payable for a full month for the month of initial eligibility or reeligibility for SSI benefits. While we recognize that this clarification may result in less reimbursement to those States that have not prorated interim assistance, we believe the legislative history of IAR reasonably indicates that Congress intended for States participating in IAR to be reinbursed only for assistance paid for periods that overlap the periods for which the SSI benefits subsequently are paid. (See 120 Cong. Rec. 20967–68 (1974).) Thus, our proposed definition of interim assistance would require all participating IAR States, in determining their IAR, to prorate the assistance amount payable for a full month for the initial month of eligibility for SSI benefits as well as the month for which eligibility is reinstated after periods of suspension or termination. SSA follows the proration rules in § 416.421 to prorate SSI benefits and the States will prorate for reimbursement purposes in the same manner. Thus, under our proposed policy, for the initial month of eligibility or reeligibility, States may be reimbursed for assistance provided individuals only for those days in the month for which it is determined subsequently that the individuals are eligible for SSI benefits.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because no additional program costs are contemplated, administrative costs are less than $1 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits; Public assistance programs, Supplemental Security Income.

Dated: October 16, 1989.

Gwendolyn S. King.

Commissioner of Social Security.

Approved: December 12, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart S of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631 of the Social Security Act; 42 U.S.C. 1302 and 1383.

2. Section 416.1901 is amended by revising paragraph (a) to read as follows:

§ 416.1901 Scope of Subpart S.

(1) *General.* This subpart explains that we may withhold your SSI benefit and/or State supplementary payments and send them to the State (or a political subdivision of the State) as repayment for interim assistance it gave you while your application for SSI was pending, or while your SSI benefits were suspended or terminated if you are subsequently found to have been eligible for such benefits. Before we will do this, the State must have entered into an interim assistance agreement with us authorizing such reimbursement, and you must have given written authorization for us to repay the State (or a political subdivision of the State).

* * * * *

3. Section 416.1902 is amended by revising the definitons of "Authorization", "Interim assistance" and "SSI benefit payment" to read as follows:

§ 416.1902 Definitions.

* * * * *

Authorization means your written permission, in a form legally acceptable to us and to the State from which you received interim assistance, for us to withhold the appropriate SSI benefit payment and send it to the State.

Interim assistance means assistance the State gives you, including payments made on your behalf to providers of goods or services, to meet your basic needs, beginning with the day of the month you apply for SSI benefits and are eligible for them, and ending with, and including, the month your SSI benefit payments begin, or assistance the State gives you beginning with the day for which your eligibility for SSI benefits is reinstated after a period of suspension or termination and ending with, and including, the month the Secretary makes the first payment of benefits following the suspension or termination if it is determined subsequently that you were eligible for benefits during that period. It does not include assistance the State gives to or for any other person. If the State has prepared and cannot stop delivery of its last assistance payment to you when it receives your SSI benefit payment from us, that assistance payment is included as interim assistance to be reimbursed. Interim assistance does not include assistance payments financed wholly or partly with Federal funds.

SSI benefit payment means your Federal benefit and any State supplementary payment made by us to you on behalf of a State (see subpart T of this part) which is due you at the time we make the first payment of benefits or when your benefits are reinstated after suspension or termination. Advance payment, as defined in § 416.520, payment based upon presumptive disability or presumptive blindness, as defined in § 416.931, or certain payments made under the administrative immediate payment procedure, are not considered SSI benefit payments for interim assistance purposes.

* * * * *

4. Section 416.1906 is amended by revising paragraph (a) to read as follows:

§ 416.1906 When your authorization is in effect.

* * * * *

(a) We make the first SSI benefit payment on your initial application for benefits or, in the case of an authorization effective for a period of suspense or termination, until the initial payment following the termiantion or suspension of your benefits.

* * * * *

[FR Doc. 90–2853 Filed 2–7–90; 8:45 am]

BILLING CODE 4190–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268 and 270

[FRL-3721-7]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Notice of reopening of comment period; notice of data availability.

SUMMARY: On January 23, 1989, the Agency proposed to amend its hazardous waste testing and monitoring regulations under Subtitle C of RCRA by: (1) Incorporating the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (SW-846) into the RCRA regulations; (2) updating SW-846 with additional methods and information; and (3) mandating minimum Quality Control (QC) procedures for all RCRA testing. (See 54 FR 3212-3229, January 23, 1989.) In response to comments, EPA is considering, in addition to the option of promulgating the rulemaking as proposed, a number of technical modifications and/or clarifications to the Third Edition of SW-846 and the inclusion of specific QC procedures in SW-846 which are described in the "Report on Minimum Criteria to Assure Data Quality," which would be incorporated as Chapter One of SW-846. The Agency is also considering deleting appendices III and X to 40 CFR part 261. Therefore, the Agency is reopening the comment period on the proposal for the purpose of receiving comments, with supporting documentation, on these new options and the deletion of appendices III and X.

DATES: EPA will accept public comments on this Notice until March 12, 1990.

ADDRESSES: The public should submit an original and two copies of their comments on this Notice to the following address: EPA RCRA Docket Clerk (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments must be marked "Docket Number F-90-WTRX-FFFFF."

The administrative record for this rulemaking is located at the EPA RCRA Docket, room M-2427 at the above address, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the "Report on Minimum Criteria to Assure Data Quality" are available from the RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000. The document number is EPA/530-SW-90-021 and there is no cost for this report. This report is also included in the administrative record (RCRA Docket).

Copies of the Third Edition of SW-846 and of the proposed Update 1 to the Third Edition are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402 (202) 783-3238. The document number is 955-001-00000-1 and the cost is $110.00 for the four-volume set plus updates. Update packages will be automatically mailed to all subscribers.

Copies of the Second Edition of SW-846 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600. The document number is PB87-120-291 and the cost is $48.95 for paper copies and $13.50 for microfiche.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000. For technical information contact Charles Sellers, Office of Solid Waste, OS-331, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4761.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background Summary
III. Discussion of Technical Modifications and Clarifications
  A. General Introduction
  B. Specific Issues
    1. Quality Control
    2. Required versus Optional Use of SW-846 Testing Methods
    3. Trace Analysis vs. Macroanalysis
    4. Equipment Standards and Reagent Preparation
    5. Holding Times
    6. Representative Sampling
    7. Analysis of Nonaqueous Liquids for Elemental Species
    8. Matrix Spikes and Method of Standard Additions
    9. Spike Recovery Correction
    10. Reagent Grade Water
    11. Appendices III and X to 40 CFR part 261
IV. Request for Comments

I. Authority

The rulemaking to which this Notice is addressed is being proposed under the authority of sections 2002, 3001, 3004, 3005, and 3006 of the Solid Waste Disposal Act, as amended (commonly known as the Resource Conservation and Recovery Act, or RCRA), 42 U.S.C. 6912, 6921, 6924, 6925, and 6926.

II. Background Summary

Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive national program for the safe management of hazardous waste. Associated with characterizing wastes, determining their proper management, and monitoring the performance of waste management units is a diverse group of testing methods that address the sampling and analytical procedures to be used. These methods are intended to promote accuracy, sensitivity, specificity, precision and comparability of analyses and test results.

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", contains the testing methods that EPA has evaluated and found to be among those acceptable for RCRA testing and which are required for specific regulations as discussed below. In situations where the regulations require the use of appropriate SW-846 methods, the regulations specify use of the Second Edition of EPA's SW-846 manual (1982) as amended by Updates I (April 1984) and II (April 1985). In January, 1989, EPA proposed to amend the regulations to specify the use of the Third Edition instead of the Second Edition. For a full description and background of the proposal addressed by this Noitice, refer to 54 FR 3212-3229 (January 23, 1989).

III. Discussion of Technical Modifications and Clarifications

This Notice announces several technical clarifications and modifications to the SW-846 proposal of January 23, 1989. (See 54 FR 3212-3229.) Included in these modifications is a new document, entitled "Report on Minimum Criteria to Assure Data Quality," (Report) that defines good field and laboratory practices. This document is being considered as a replacement for the previously proposed Chapter One of the Third Edition of SW-846. The

Agency is also considering making all of Chapter One (not just sections 1.2 and 1.3 of Chapter One, as proposed in the January 1989 Notice) mandatory for all RCRA testing, with the exclusion of certain reasonable and legitimate exceptions noted in Section III. B. To obtain this document, refer to the section under "ADDRESSES" of this notice.

In addition, the Agency is also considering deleting appendices III and X to 40 CFR part 261. Appendix III is unnecessary and potentially misleading, and appendix X will become obsolete upon incorporation of the Third Edition of SW–846.

The public is invited to submit comments only on the Report, and its replacement of the proposed Chapter One of SW–846, the technical clarifications and modifications to the Third Edition, and the deletion of appendices III and X to CFR 40 part 261 as addressed by this Notice. This Notice does not reopen the comment period on any other aspect of the January 23, 1989 rulemaking proposal. All timely comments submitted on the new information contained in today's notice together with all the timely comments previously submitted in response to the January notice, will be considered in preparation of a final rulemaking.

A. General Introduction

The nature of SW–846 is such that procedures are written to determine analytes at low concentrations, e.g., parts per million (ppm) or parts per billion (ppb). Testing under RCRA, however, requires the analysis of a broad range of matrices (e.g., water, soil, clay, nonaqueous liquids, process residues, ash) and a broad range of concentrations (e.g., ppb to percent levels). No one set of testing procedures is, therefore, uniformly applicable. This problem often may be overcome by providing a selection of sample preparation (including dilution, concentration, sample size adjustment, etc.), cleanup, and determinative procedures from which the analyst can select the proper analytical procedure to be used in an individual situation. For example, when analyzing a relatively clean ground water sample for a semi-volatile organic compound, it may be sufficient to employ a sample preparation procedure, Method 3510, coupled with determinative procedure, Method 8270. On the other hand, if one must analyze a wastewater containing compounds that interfere with the determination of the compounds of interest, the analyst will have to employ one of the cleanup methods prior to using the determinative procedure in Method 8270. The various preparation, cleanup, and determinative procedures are listed in the appropriate sections of SW–846. Except for those situations where the RCRA regulations specify use of a particular method, it is appropriate for the chemist to use judgment, tempered by experience, in selecting an appropriate set of methods from SW–846 or the scientific literature for preparing and analyzing a given sample.

B. Specific Issues

1. Quality Control

In the January 1989 Notice of Proposed Rulemaking (NPRM), the Agency proposed to make certain Quality Control (QC) procedures mandatory for all testing and analysis conducted to comply with the hazardous waste regulations under subtitle C of RCRA. The January proposal represents one part of EPA's program to establish and require minimum QC procedures for all RCRA-related testing and analysis. The goal of this effort is to ensure consistent and correct application of appropriate methods and to produce data of known and documented quality.

The proposed QC procedures to be followed are found in the revised Chapter One of the Third Edition of SW–846, Update 1 (specifically sections 1.2 and 1.3, and procedures referenced therein). Because of the wide reaching nature of these procedures and their importance to the RCRA program, the Agency received many comments on this QC procedures chapter. In addition, the Agency received the assistance of the American addition, the Agency received the assistance of the American Society for Testing and Materials (ASTM) in clarifying the QC requirements and definitions.

Based on the comments received and other new information, the Agency has revised Chapter One of the Third Edition of SW–846. These revisions are contained in a document entitled "Report on Minimum Criteria to Assure Data Quality." The Agency is also considering making all of Chapter One (not just sections 1.2 and 1.3 of Chapter One, as proposed in the January 1989 notice) mandatory for all RCRA testing, with the exclusion of certain reasonable and legitimate exceptions noted below. The Agency is considering adopting these revisions as Chapter One of the Third Edition of SW–846 in the final rule. These techical revisions provide definitions and procedures necessary for generating data of known and documented quality when performing RCRA-related sampling and analysis activities. The Agency believes that this revised Chapter One will better meet the needs of the regulated community as well as the regulatory agencies and, therefore, solicits comments on the proposed revisions.

2. Required Versus Optional Use of SW–846 Testing Methods

Certain hazardous waste regulations under Subtitle C of RCRA require that specific testing methods described in the identified edition of SW–846 be employed for certain applications. These required methods and regulatory citations (40 CFR parts 260–270) are the ones specified for determining whether: (1) Wastes exhibit the characteristics of corrosivity or toxicity, §§ 261.22(a) and 261.24(a); (2) for determining if wastes contain free liquids, §§ 264.314(a) and 265.314(d); (3) for any testing done in support of a petition for delisting of a waste, § 260.22(d)(1)(i); and (4) for testing during a trial burn in support of an application for a hazardous waste incineration permit § 270.62(b)(2)(i)(C). For other RCRA testing and monitoring needs, any reliable analytical methods may be used to meet the regulatory requirements. This notice, or the subsequent final rule, should not be construed to require the use of SW–846, Third Edition methods except where specifically prescribed by regulation. In addition, unless specifically required in SW–846 or this rule, regulatoy agencies (and others) need not be required to use the full Chapter One quality control procedures when they are faced with situations (such as those described below) where the specific application of the quality control procedures may not be appropriate.

The testing methods and approaches described in SW–846 are designed primarily for use by persons to demonstrate that a regulatory threshold has not been exceeded. Because of this focus, the Agency has received questions regarding the applicability of SW–846 to other types of activities. For example, in the majority of cases the regulated community uses SW–846 methods to prove that a waste does not contain a given analyte at a specific concentration or does not exhibit a hazardous waste characteristic. (Demonstrating that a waste is not a hazardous waste is hereinafter referred to as proving the negative).

The sampling strategy for these situations (proving the negative) should be thorough enough to insure that one does not conclude a waste is non-hazardous when, in fact, it is hazardous. For example, one needs to take enough samples so that one does not miss areas of high concentration in an otherwise clean material. Samples must be

handled so that properties do not change and contaminants are not lost. The analytical methods must be quantitative, and regulatory detection limits must be met and documented.

While the regulated community is concerned with proviing the negative, or absence of any hazardous constituents or characteristics, regulatory agencies are often concerned with demonstrating the opposite—that the waste concentration of a specific analyte in a waste, exceeds a regulatory level, or that the waste exhibits a hazardous waste characteristic. (Hereinafter referred to as proving the positive).

Sampling strategies for these situations (proving the positive) often do not require a precise determination of the actual magnitude of the property. If a sample possesses the property of interest, or contains the constituent at a high enough level relative to the regulatory threshold, then the population from which the sample was drawn must also possess the property of interest or contain that constituent. Depending on the degree to which the property of interest is exceeded, testing of samples which represent all aspects of the waste or other material may not be necessary to prove that the waste is subject to regulation.

Likewise, a sample need not always be handled to prevent losses because if the sample contains the constituent above a regulatory level even with losses, then clearly the level has been exceeded. Therefore, use of methods to show that a level has been exceeded need not always be quantitative, but could simply be qualitative or semi-quantitative. The results for qualitative or semi-quantitative determinations are often expressed by stating that the sample contains a minimum amount of analyte. Well defined detection limits, adequate analyte recoveries, and high degrees of precision are not always necessary attributes of methods used to make such determinations. Simply proving a compound present (selectivity) in the waste and that its concentration is greater than a regulatory limit are the important attributes.

While quality control requirements address both positive showings and negative showings equally, some procedures or steps in a method, which are quality control related, may only be important in those sampling and analytical determinations performed to ensure that the trace concentrations of hazardous constituents are accurately measured. For example, holding times are considered a quality control issue. However, there are cases (explained below) where adherence to a specific holding time has little or no impact on the adequacy of a regulatory determination. While SW–846 sampling and laboratory practices and QC procedures are generally appropriate when testing to show either a positive or negative situation, the full panoply of Chapter One QC procedures may not always be needed. An example of a QC procedure, such as a matrix spike, that does not apply is where one is to determine whether a waste exhibits the characteristic of corrosivity or whether it contains free liquids. In these cases spiking does not apply because spiking would change the sample's behavior and the results would be meaningless. Another example is when characterizing a high concentration liquid waste for ignitability. Here a field blank is not applicable since ignitability testing is a "yes/no" type test (i.e., the liquid is ignitable or its not). Thus, a field blank has no relevance in this case.

Furthermore, some of the chemical analysis test methods set forth in appendix III to 40 part 261 would not be appropriate for demonstrating that a sample contains a constituent because the working concentration range of the method is much lower than the concentration of the sample. This point is covered in more detail in the next section; however, it is noted that sections of SW–846 (beyond Chapter One) require some revision to better clarify the applicability of certain tests.

Therefore, the Agency intends to revise the discussion of the applicability of some quality control procedures used in SW–846, beyond the changes made to Chapter One, using language similar to that provided above, to make these types of distinctions.

3. Trace Analysis vs Macroanalysis

Implicit in the proceding argument is the fact that SW–846 was designed largely for use in showing that a waste does not contain certain hazardous constituents or characteristics. In that regard, many SW–846 sample preparation methods are designed around trace analysis rather than the percent level determinations often required for concentrated wastes. These methods, however, might be suitable for percent level determination analysis when appropriately modified by the analyst.

For example, it is permissible to adjust the sample preparation methods prior to determination when the concentrations of the target analytes in the samples are known or believed to fall outside of the linear operating range of the analytical instrument used for measurement. The Agency has always believed that when very concentrated samples are analyzed, dilution or reduction in size of the sample aliquot tested may be needed to assure that the analytical values obtained are within the linear operating range of the instrument. Furthermore, the Agency understands that the analyst may elect to use smaller samples and/or dilution when concentrations exceed the capacities of reagents or columns stated for use in the methods. In addition, it may be necessary to use the alternative techniques described in existing methods for the introduction of a sample into an instrument when high concentrations of target analytes are known or believed to exist. An example of this would be the use of the direct injection method for sample introduction rather than the purge and trap technique when the sample contains high concentrations of volatile organic compounds. However, the analyst must make particular note of any deviations from the published methodology when reporting the results of the analysis.

The Agency anticipates making changes in the final promulgation to SW–846 that will allow the analyst needed latitude regarding sample size, sample dilution, sample concentration, and choice of analytical methodology when macroanalysis is performed. These changes would consist of adding a discussion similar to the one above to appropriate chapters and methods contained in SW–846. The Agency requests comment on these anticipated changes.

4. Equipment Standards and Reagent Preparation

In each analytical method in SW–846, detailed specifications are given relative to the type and size of individual glassware and other apparatus, and to the preparation of reagents such as stock standard solutions. This specificity derives, in part, from the desire to give as much assistance as possible to the analyst and to ensure uniform testing protocols.

Since many types and sizes of glassware and supplies are commercially available, and since it is possible to prepare reagents and standards in many different ways, some of those given in the methods may be replaced by any similar types as long as substitution does not affect the overall quality of the analyses.

For example, vials are frequently specified as glass "with a Teflon-lined screw-cap." An acceptable alternative could be Teflon-lined crimped top vials. Similarly, reagents can be prepared in any quantity appropriate to achieve optimum efficiency of laboratory operations, provided that concentrations

specified in the methods remain unchanged. For example, the 10N NaOH specified in Method 3510 can be made up in any volume provided that the proportion of 40g NaOH per 100 ml of solution remains constant.

The Agency considers that the substitution of equivalent glassware and equipment would meet the overall requirements for quality control, and believes that this flexibility is important for the analytical chemist to be able to meet a variety of needs. However, the Agency is concerned that the public not interpret this flexibility in ways that would substantially affect the analyses. One principle to keep in mind is that this flexibility applies, in general, to volume capacity (size) and make or brand name of glassware and equipment, but not to the funciton or type of equipment specified. Similarly, when mixing batches of standard reagents, the size of a batch is not important except that there be enough for its intended use. What is important in the preparation of standards and reagents is the designated concentration and purity of the final product.

The Agency anticipates making changes in the final promulgation to SW–846 that will explicitly permit the analyst latitude regarding choice of glassware and equipment based on the discussion above. These changes will consist of adding a discussion similar to the one above to SW–846. The Agency requests comment on these anticipated changes.

5. Holding Times

Use within the Agency of holding times and preservation techniques originated with the National Pollutant Discharge Elimination System (NPDES), authorized under the Clean Water Act (CWA), which was concerned with the loss of trace level contaminants from wastewater samples collected and analyzed under a self-monitoring program. This practice is continued under the Contract Laboratory Program (CLP) and authorized under the Comprehensive Environmental Response, Compenstation, and Liability Act (CERCLA), which implements essentially the same holding times and preservatives for all water samples containing low contaminant levels.

Holding times and preservation techniques are currently under study by the Agency. As yet, no study has been published to indicate that highly contaminated materials require such measures to preserve their integrity.

Like the other Agency programs, SW–846 has adopted many of these recommended holding times. The Agency recognizes that these holding times were designed for aqueous samples containing trace levels of contaminants. These samples must be extracted and/or analyzed within the specified holding time for the results to be considered reflective of total values. Results of samples not analyzed within the specified holding time will be considered minimum values. That is, the actual concentration will be assumed for regulatory purposes to be equal to or greater than the concentration determined after the holding time has expired. The Agency anticipates making changes in the final promulgation to SW–846 that will permit the analyst latitude regarding implementation of holding times based on the discussion above. These changes will consist of adding a discussion similar to the one above to SW–846. The Agency requests comment on these anticipated changes.

6. Representative Sampling

Comments received on the January 1989 proposal revealed a great deal of confusion over what constitutes representative sampling in relation to the sampling approach used in a specific case. Current regulations require that representative sampling be performed when assessing wastes for hazardous characteristics. The issue becomes "what is the sample meant to represent". The Agency offers the following four examples to clarify its interpretation of representative sampling.

(1) Materials comprised of particles of extremes in density or size are, at times, difficult to representatively sample. An example is a large pile of smelter slag where particles range in size from dust particles to 1300 lb casts. In such cases, non-random sampling based on the experience and judgment of the person performing the sampling may be employed (e.g., collecting particles less than ½ inch in diameter). This non-random sample provides a reasonable approximation to a random sample since large particles are expected to have similar composition to smaller ones because they resulted from the same process. Furthermore, this non-random sample is expected to be "representative" of the pile since the composition of small and large particles are similar. Care must be taken to ensure that the purpose of the sampling is considered when conducting non-random sampling. For the above example, the chemical composition of the waste may be independent of particle size; however, properties of the waste such as its leaching potential may still be dependent on particle size.

(2) Obtaining a representative sample of high volume wastes presents a major sampling challenge. Mining residues, for example, may occupy hundreds of acres, making representative sampling of the entire waste very difficult. In such cases, replicate composites composed of random grab samples of the readily available material (e.g., residues within 12 inches of the surface) may be taken. Conclusions regarding the level of hazard of the waste can be drawn by examining the variability of the values obtained on replicate composites. The sampling, compositing and data evaluation process is then repeated until the confidence in the representativeness of the mean reaches the desired level (e.g., less than 10% probability that the true mean is above an appropriate regulatory threshold). The concept is that while each individual sample or even composite may not be representative of the residue, the sum total of samples taken will represent the average property of the waste even though the entire waste stream was not sampled.

(3) In some very limited situations, because the bulk of the waste material is unavailable and decisions need to be made on a limited amount of the remaining material, and where it is unclear whether a sample is representative of a waste, the Agency will assume that the available material is representative of the waste unless proven otherwise. For example, it is not always possible to obtain a representative sample of a hazardous waste that has been illegally disposed, when all that is left for testing is a drum containingly only residues of the waste. In such an instance, a representative sample of that residue is assumed to represent the waste that was in the drum, and conclusions regarding the hazardousness of the waste can be drawn.

(4) One aspect of the representative sampling issue that warrants clarification is the situation in which a body of waste to be characterized may be composed of a number of different wastes. For example, a disposal site is found that contains components of qualitatively different properties (e.g., color, composition, physical state) and the question to be answered is whether hazardous waste was disposed of at the site. In this case, one is faced with the situation, not of sampling all components at the site, but rather of sampling one or more individual components of the body of waste at the site. Each of the qualitatively different components (materials) could be a discrete waste, and the concept of representative sampling would refer to sampling of each discrete waste rather

than sampling all of the waste at the site as a whole. Therefore, when faced with such a situation, the sampler would identify the components of the waste site to be characterized and would obtain data representative of the properties of each component of interest. The decision as to whether or not the site contains hazardous waste would, therefore, hinge on whether any of the individual components disposed were hazardous, and not on whether the average of all of the components at the site exhibit the properties of hazardous waste.

The Agency anticipates adding a discussion similar to the one above to SW–846. The Agency requests comment on this addition.

7. Analysis of Nonaqueous Liquids for Elemental Species

Sample preparation methods are not currently available in SW–846 to render nonaqueous liquids in a form that can be analyzed by the atomic absorption or inductively coupled plasma atomic emissions (ICP) type analytical methods for six important elements. These elements are: mercury, arsenic, selenium, lead, barium, and silver. Lack of appropriate SW–846 methods may hinder compliance with various RCRA regulations.

To correct this deficiency, EPA is currently developing a microwave digestion method. In addition, the Agency is considering the approval of a method currently available as "Test Method C—Bomb, Acid Digestion Method" as found in ASTM Method E926–88: "Methods of Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals". Method E926–88 is available from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, telephone number (215) 299–5585. Together, these two methods (microwave digestion and bomb, acid digestion) will provide procedures to prepare nonaqueous liquids for elemental analysis.

Pending final action on incorporation of these methods into SW–846 for nonaqueous samples, the Agency believes that the results from Test Method C of ASTM Method E926–88 are valid as long as the recommended quality assurance and quality control procedures specified in the proposed Report and this method (Test Method C of ASTM Method E926–88) are followed.

8. Matrix Spikes and Method of Standard Additions

The Agency has received many questions about the use of a matrix spike (sometimes referred to as the method of known addition) and the method of standard additions (MSA). Specifically, many chemists performing metals analyses believe that MSA, particularly where internal standards are used, is not necessary and is an unwarranted burden and have asked for clarification regarding the use of both matrix spikes and MSA.

The Agency has always recommended the use of matrix spikes and standard additions to assure accuracy as part of the RCRA program. The Agency requires the method of standard additions when analyzing EP Toxicity leachates in support of delisting petitions, and when analyzing new matrices (to determine whether there are suppressive interferences). The Agency considers that these methods (MSA and matrix spikes) are always appropriate although MSA may not always be required. Furthermore, when comparing the results from different analyses of the same sample for the same analyte, the determination made using the method of standard addition is preferable over one that does not.

9. Spike Recovery Correction

Matrix spike recoveries are used to determine whether the analytical procedure is effective and to permit normalization of results to 100%. (Note: the recoveries of the analytes in the matrix spike mixture must be representative of all target analytes or the individual target analytes must be spiked into the matrix to determine percent recovery.) For purposes of RCRA testing, the Agency believes it is appropriate to correct a measured concentration for recovery. Therefore, in response to questions, the Agency is proposing to add the following language to Chapter One of SW–846, Third Edition:

> The bias determined from the matrix spike information shall be used to correct the measured values. Details on the calculations are provided in the glossary under the definition of bias.

Insert in glossary:

Bias (B)

The deviation of the measured value (X_t) from an accepted reference value (T) or a known spiked amount (K). Bias can be assessed by comparing a measured value to an accepted reference value in a sample of known concentration or by determining the recovery of a known amount of contaminant spiked into a sample. Thus, the bias is calculated as:

$$B = X_t - T$$

or

$$B = (X_s - X_u) - K$$

where

X_t = measured value for reference value,
X_s = measured value for spiked sample,
X_u = measured value for unspiked sample, and
K = known value of the spike in the sample.

Using the following equations yields the percent recovery (%R). The value of %R is then used to correct the measured values for that batch of data. Thus,

$$\%R = 100(X_t/T)$$

or

$$\%R = 100\,(X_s - X_u)/K$$

and

$$X_c = 100(X_u/\%R)$$

where X_c = corrected value.

10. Reagent Grade Water

Finally, the Agency has had many requests for clarification regarding the level of purity needed for the reagent grade water used when conducting tests. The Agency defines reagent water (for RCRA purposes) as water which is generated by any method which would achieve the performance specifications for ASTM Type II water.

For volatile analyses, it is recommended that reagent water be further treated by one of the following methods:

(1) Pass the water through a carbon filter bed containing approximately 500 grams of activated carbon (Calgon Corp. Filtrasorb-300 or equivalent);

(2) Pass the water through a purification system (Millipore Super-Q or equivalent); or

(3) Boil water for 15 minutes and then, while maintaining the water temperature at 85 °C to 95 °C, bubble a contaminant free inert gas (e.g., nitrogen) through the water for 1 hour. While still hot, transfer the water to a narrow mouth screw-cap bottle under zero-headspace and seal with a Teflon-lined septum and cap.

The Agency further recommends that reagent water should be monitored periodically for impurities as part of the laboratory's QA program.

For a method blank to be acceptable for use with the accompanying samples, the concentration in the blank of any analyte of concern must be no higher than the highest of either:

(1) The detection limit, or

(2) Five percent of the regulatory limit for that analyte, or

(3) Five percent of the measured concentration in the sample.

In addition, the method blank must contain no other impurities at a concentration which will affect the performance of the method.

These technical points are being considered for inclusion in the Third Edition of SW–846 at this time, and comment is requested.

11. Appendices III and X to 40 CFR Part 261

The Agency is considering removing appendices III and X of part 261 from the regulations. Appendix III summarizes information found in SW–846 for the convenience of the regulated community. It does not contain any additional or independent requirements. In addition, as currently framed, appendix III implies that use of SW–846 is mandatory in all instances. This is not the case. SW–846 is required for use in only certain well defined instances [see 54 FR 3212–3229, January 23, 1989). To remove any ambiguity, the Agency is considering removal of appendix III in its entirety.

Appendix X was established to meet the needs for the chemical analysis of certain wastes containing particular chlorinated dioxins, dibenzofurans, and phenols in order to establish those wastes as acutely hazardous [see 50 FR 1978–2006, January 14, 1985]. Appendix X contains Method 8280: Method of Analysis for Chlorinated Dibenzo-P-Dioxins and Dibenzofurans. This method is superseded by the method contained in the Third Edition of SW–846, which is retitled Method 8280: The Analysis of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans. To avoid any ambiguity, the Agency is considering removal of appendix X in its entirety. Therefore, the Agency is requesting comments on removal of appendices III and X from the Code of Federal Regulations.

The Agency's regulations contain no references to appendix X. The Agency proposed to delete references to appendix III in its regulations as follows:

—Delete "Appendix III" in 40 CFR 260.22(d)(1)(i) and insert in its place " 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA Publication SW–846, incorporated by reference, see § 260.11(a)";

—Delete "referenced in 40 CFR part 261, appendix III" in 40 CFR 270.19(c)(1)(iii) and insert in its place "§ 260.11(a)";

—Insert " 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA publication SW–846, incorporated by reference, see § 260.11(a), or * * *" in 40 CFR 260.1(b)(5) after the words "those prescribed in," in 40 CFR 260.20(a) after the words "testing or analytical method to," in 40 CFR 260.21(a) after the words "testing or analytical method to" and after the words "method." prescribed in," and in 40 CFR 260.21(b)(3) after the words "methods prescribed in."

IV. Request for Comments

The Agency requests comments on: (1) The specific clarifications and/or changes in procedures for use and interpretation of guidance from the RCRA test methods manual, SW–846 discussed above; (2) The "Report on Minimum Criteria to Assure Data Quality" and its replacement of the proposed Chapter One to SW–846 as discussed in the January 1989 Notice; and (3) on the deletion of appendices III and X to 40 CFR part 261. It should be noted that the Agency is only reopening the comment period on these specific points presented in this Notice.

Comments on this Notice must be recieved by EPA on or before March 12, 1990, to ensure consideration. Comments are to be addressed, in triplicate, to Docket Number F–90–WTRX–FFFFF.

Dated: January 29, 1990.

Mary A. Ceade,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 90–2972 Filed 2–7–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, and 178

[Docket No. HM–169A; Notice No. 90–1]

Transportation Regulations; Compatibility With Regulations of International Atomic Energy Agency; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Extension of time to file comments.

SUMMARY: On November 14, 1989, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register (54 FR 47454); Docket No. HM–169A, Notice No. 89–8) which proposed to align DOT's Hazardous Material Regulations (HMR; 49 CFR parts 171–180) with the 1985 Edition of the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6. Because of the broad scope, detail and complexity of the proposals contained within the NPRM, The Radiopharmaceutical Shippers and Carriers Conference, and others, requested a 90 day extension of the comment period. RSPA concurs with these requests and this notice extends that comment period.

DATES: The date for filing the comments is extended from February 9, 1990, to May 11, 1990.

ADDRESSES: Address comments to Dockets Unit (DHM–30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Chief, Radioactive Materials Branch, Technical Division, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC, 20590, (202) 366–4545.

Issued in Washington, DC on February 2, 1990, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–2850 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–02; Notice 1]

RIN 2127–AD22

Federal Motor Vehicle Safety Standards; New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to implement the petition by the European Tyre and Rim Technical Organisation (E.T.R.T.O.) requesting that NHTSA amend its labeling requirements in Standard No. 109, *New Pneumatic Tires—Passenger Cars* to require a manufacturer to place the required markings between the bead and a point one-half the distance from the bead to the shoulder of the tire, if the tire's maximum section width is close to the bead. This amendment would add to Standard No. 109 a provision previously added by the agency to another tire standard, the one related to tires on

vehicles other than passenger cars. Since the agency has previously obtained comment on an identical provision, it finds good cause for providing a comment period of only 30 days.

DATES: Comment closing date: Comments on this notice must be received on or before March 12, 1990.

Proposed effective date: If adopted, these amendments would be effective 180 days after the publication of the final rule.

ADDRESSES: All comments on this notice should refer to docket indicated in the heading of this notice and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–4803.

SUPPLEMENTARY INFORMATION: Section S4.3 of Standard No. 109, *New Pneumatic Tires—Passenger Cars* (49 CFR 571.109) sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. Specifically, it provides that the information (e.g., number of plies and inflation pressure) shall appear between the maximum section width and bead. Sections S4.3.1 and S4.3.2 provide more extensive locational requirements for other information (e.g., the DOT certification, and the name of the manufacturer or brand name and number assigned to the manufacturer) to be placed on car tires. They provide that the labeling should be done "in the manner specified in part 574." Part 574, which applies to both car tires and tires for vehicles other than cars, begins in the same manner as S4.3 of Standard No. 109, specifying that the tire identification number shall appear between the maximum section width and bead. However, part 574 goes on to provide that if a tire's maximum section width falls within one fourth of the distance from the bead to the tire shoulder, the tire identification number must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. Section S4.3 does not refer to part 574 or otherwise provide guidance about the placing of the markings required by S4.3(a)–(g) in situations where the tire has its maximum section width close to the bead.

NHTSA first addressed the problem of labeling tires whose maximum section width is close to the bead on September 26, 1984, when it issued a notice of proposed rulemaking (NPRM) in response to a petition by Michelin regarding Standard No. 119, *New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars* (49 CFR 571.119). The petition requested that the standard be amended to specify that when the tire's maximum section width is so close to the bead as to make it impractical to label safety information between those areas, the manufacturer be required to label the safety information between the tire bead and a point halfway between the bead and tire shoulder. (49 FR 37816). While the petitioner only requested amending Standard No. 119, the NPRM also proposed amending part 574, *Tire Identification and Recordkeeping* (49 CFR 574). However, the NPRM did not refer to Standard No. 109.

After reviewing the comments to the NPRM, NHTSA amended § 574.4 and Standard No. 119 to permit placing markings at a different location in order to permit the introduction of a new tire concept for vehicles other than cars where the tire's maximum section width is at the bead. (50 FR 10773, March 18, 1985). In particular, Figure 1 of part 574 was amended to specify the requirements for the label's position if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder. In that case, a marking must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. This amendment to part 574 had the practical effect of applying the new requirement to section S4.3.1 and S4.3.2 of Standard No. 109 given that these provisions state that tires must be labeled "in the manner specified in part 574." However, the 1985 final rule did not amend the labeling requirements for car tires in section S4.3 of Standard No. 109. Section S6.5 of Standard No. 119 was expressly amended to permit this new tire technology.

On June 29, 1989, the European Tyre and Rim Technical Organisation (E.T.R.T.O.) notified NHTSA that a new type of pneumatic tire for passenger cars with its maximum section width close to the bead would not comply with the current requirements in S4.3 of Standard No. 109. As a result, E.T.R.T.O. petitioned the agency to amend section S4.3 to permit labeling on this new type of tire consistent with Figure 1 of part 574.

After reviewing the petition, the 1985 rulemaking, and the current regulations; NHTSA has decided to grant the petition and propose the petitioner's request to expressly include the marking location provisions of Figure 1 of part 574 in section S4.3 of Standard No. 109. The agency tentatively concludes that amending the standard in this fashion would better address situations in which the maximum section width of passenger car tires is near the bead.

Since the 1985 rulemaking did not address applying these marking location provisions to the information specified in S4.3(a)–(g) of Standard No. 109, NHTSA believes that it is necessary to seek public comments on this rulemaking. Nevertheless, because the agency has conducted a similar rulemaking related to the labeling requirements for non-passenger car tires, the agency finds for good cause that an expedited rulemaking is appropriate. Therefore, the agency has determined that a comment period of 30 days would be adequate.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments would not impose new requirements for tires but instead would permit more effective labeling on certain tires. Selection of this option is a discretionary decision made by the tire manufacturer and is not a mandatory safety requirement. A Regulatory Evaluation is not required, because this rule will have minimal economic impacts.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effect of this action on small entities. I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, tire manufacturers would qualify as small businesses. Even the effect on small businesses, small organizations, and small governmental units through the purchase of motor vehicles, would be nominal.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this proposal would not

have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act and determined that the proposed rule would not have any significant impact on the human environment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403 and 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [Amended]

2. S4.3 of 571.109 would be revised to read as follows:

* * * *

S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2, each tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) through (g). On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and a point one-half the distance from the bead to the shoulder of the tire. However, in no case shall the information be positioned on the tire so that it is obstructed by the flange or any rim designated for use with that tire in Standard Nos. 109 and 110 (§ 571.109 and § 571.110 of this part).

(a) One size designation, except that equivalent inch and metric size designations may be used;

(b) Maximum permissible inflation pressure;

(c) Maximum load rating;

(d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different;

(f) The words "tubeless" or "tube type" as applicable; and

(g) The word "radial" if the tire is a radial ply tire.

* * * * *

Issued on February 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-2847 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 87-04, Notice 6]

RIN 2127-AC 73

Federal Motor Vehicle Safety Standards Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking; response to petitions for reconsideration.

SUMMARY: NHTSA amended Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake requirements in a final rule published in the **Federal Register** (53 FR 7931) on March 11, 1988. The amendments required actuation of a mechanical means for holding the parking brakes within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation.

NHTSA received two petitions for reconsideration of that final rule, from Navistar International Corporation and Volvo GM Heavy Truck Corporation. This notice responds to those petitions and proposes further revisions in Standard No. 121's parking brake requirements. In addition to proposing amendments in light of the petitions for reconsideration, the notice proposes new requirements concerning release performance and accumulation of actuation energy for parking brakes. Finally, the notice proposes an interpretative amendment to incorporate an earlier interpretation in the language of the standard.

DATES: Comments must be received on or before April 9, 1990. The proposed amendments would become effective 30 days after publication of a final rule. From that time until 179 days after publication, manufacturers could, in the case of requirements which are being superseded, comply with either the new requirements or the pre-1988 requirements. Compliance with the new requirements would be required 180 days after publication.

ADDRESSES: Comments should refer to the docket and notice numbers set forth

above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register (53 FR 7931) on March 11, 1988, NHTSA amended Standard No 121, *Air Brake Systems*, to clarify the standard's parking brake requirements, particularly as they relate to air-applied, mechanically held parking brake systems. The amendments required actuation of a mechanical means for holding the parking brakes within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation.

NHTSA stated in the March 1988 notice that it believed all parking brakes currently being sold complied with the amendments being adopted. The agency also stated its belief that since any necessary certification could be accomplished by engineering analysis and simple tests, 180 days would provide sufficient leadtime for that purpose. The amendments therefore required compliance effective 180 days after publication of the final rule, while permitting manufacturers to comply prior to that time with either the new requirements or the requirements being superseded.

NHTSA received petitions for reconsideration from Navistar International Transportation Corporation and Volvo GM Heavy Truck Corporation. Both of the petitions concerned the parking brake timing requirements. In partial response to the two petitions, NHTSA delayed the time that the amendments would become effective on a mandatory basis. See 43 FR 35075, September 9, 1988; 54 FR 25460, June 15, 1989. The purpose of the delay was to permit the agency to complete its analysis of the arguments made by the petitioners, and provide a further response to the petitions.

This notice provides NHTSA's further response to those petitions and, in light of the petitions, proposes further revisions in Standard No 121's parking brake requirements. In addition, the notice proposes new requirements concerning release performance and accumulation of energy for parking brakes. Finally, the notice proposes an interpretative amendment to incorporate an earlier interpretation in the language of the standard.

Requirements Related to Petitions for Reconsideration

The primary rationale for the parking brake timing requirements is NHTSA's belief that a vehicle's parking brake system should generate retardation force in as short a time as is practicable, since the parking brake system is sometimes used as an emergency braking system. As indicated above, the agency stated in the March 1988 notice that it believed all parking brakes currently being sold complied with the amendments being adopted. However, NHTSA indicated its belief that as new concepts in parking brake systems develop, it was appropriate to ensure that such systems do not have significant delays in parking brake application and holding.

The approach of the March 1988 final rule was to require that vehicles be capable of meeting parking brake retardation force requirements, specified in terms of a grade holding or draw bar test, within a specified time. For trucks and buses, the amendments require minimum parking retardation force requirements to be met at all times after three seconds from the time of actuation of the parking brake control. For trailers, the amendments require minimum parking retardation force requirements to be met at all times after three seconds from the time that venting to the atmosphere of the front supply line connection is initiated.

In responding to commenter concerns that it is not possible to safely conduct the grade holding or draw bar tests within three seconds, NHTSA stated that it did not believe that manufacturers must, as a practical matter, determine their compliance with the timing requirement during their grade holding or draw bar testing. The agency stated that, instead, certification could be accomplished by using an engineering analysis of the vehicle's parking brake system or, if necessary, a test measuring the air pressure in the parking brake system to determine when the pressure reaches zero. The assumption behind this latter statement was that if a vehicle equipped with a spring brake parking brake system could comply with the grade holding or draw bar test with zero air pressure in a vehicle's spring chambers, i.e., full parking brake application, and if upon actuation of the parking brakes the air pressure in those spring brake chambers reaches zero pressure within three seconds, then the vehicle would be able to comply with the grade holding or draw bar test within three seconds. It should be noted that a test to determine when the air pressure in the parking brake system reaches zero is only appropriate for vehicles equipped with spring brake parking brake systems. For an air-applied, mechanically held parking brake system, a comparable test would determine when the pressure in the parking brake chamber reaches full application pressure.

One of the petitioners, Navistar International Transportation Corporation, stated that it has confirmed that, in its parking brake systems, the air pressure drops to zero within the allotted time. That company stated that based upon this fact and the agency's statements in the preamble, it believes that its vehicles comply with the timing requirements of the final rule. Navistar added, however, that after actuation of the control knob, experience has shown that as much as one revolution of the braked wheels may be necessary to permit the brake shoes to be sufficiently energized to reach peak torque. That company stated that this "wrap up" process can take several seconds, depending on brake characteristics and driver finesse. Navistar International stated that should this "wrap up" movement not be considered permissible by the agency, it requested that its submission be considered a petition for reconsideration of the final rule, to permit the "wrap up" movement.

NHTSA believes that Navistar is likely referring to the results of static draw bar pull parking brake tests, which are conducted on a level surface. On level ground, upon application of force to the brake chamber push rod resulting from a parking brake application, the foundation brakes are not developing torque. Under these conditions, some wheel movement is needed to "wrap-up" the brakes in order for the brakes to start to develop torque and to eventually develop maximum torque.

As illustrated by the above example, parking retardation force varies with the amount of "wrap-up." As a practical matter, NHTSA does not believe that the "wrap-up" that occurs in either a draw bar test or a grade holding test is significant with respect to the

performance of parking brakes when used as an emergency back up braking system, since the vehicle would be at speed in such a situation with its wheels rotating rapidly.

NHTSA is concerned, however, that the "wrap-up" issue is significant with respect to determining whether a vehicle can meet the current parking brake timing test. As indicated above, that test is currently written to require that vehicles be capable of meeting the grade holding or draw bar test within a three-second period. The agency believed that it was not necessary to actually conduct those tests within the three-second period because a manufacturer could rely on separate determinations of (1) whether the air pressure in the vehicle's parking brake chambers reaches zero, in the case of a spring brake parking brake system, or maximum application pressure, in the case of an air-applied, mechanically held parking brake system, within three seconds, and (2) whether the vehicle could comply with the grade holding or draw bar test with either zero or maximum pressure, whichever is appropriate for the type of parking brake used, in its parking brake chambers. However, this belief did not take into account the effect of "wrap-up," which directly affects a vehicle's ability to comply with the grade holding or draw bar test, and which is affected in time and degree by those tests. Since the ability to comply with the grade holding or draw bar tests is affected by a condition which can take longer than three seconds to determine, NHTSA now recognizes that manufacturers cannot simply rely on the two separate determinations cited above as indicating that a vehicle complies with the parking brake timing test.

In order to ensure the practicability and objectivity of the parking brake timing test, NHTSA is proposing a somewhat different requirement. Instead of expressly requiring vehicles to be capable of meeting the grade holding or draw bar test within three seconds, vehicles would instead be required to be capable of meeting the parking brake retardation force test with the amount of pressure in the vehicle's parking brake chambers after the three-second period. Manufacturers could easily measure the amount of pressure in the parking brake chambers at the three-second test point, and then take as much time as necessary to conduct the grade holding or draw bar test with that amount of pressure in the vehicle's parking brake chambers. In the case of a draw bar test, the "wrap-up" that may occur, during that test, as well as the time necessary to apply the draw bar force, could extend the time needed to develop the required level of retardation force beyond three-seconds, without creating a compliance problem. In the case of a grade holding test, the "wrap-up" that may occur during that test as the driver releases the brake pedal and the vehicle's brakes go through the transition from a service to a parking brake application, as well as the time that is necessary for the driver to release the brake pedal, could extend the time needed for the vehicle to be held stationary by only the parking brakes. NHTSA believes that the proposed test would ensure that a vehicle's parking brake system quickly generates retardation force as a back up emergency brake system.

While NHTSA does not believe that the "wrap-up" that occurs in either a draw bar test or a grade holding test is significant with respect to the performance of parking brakes when used as an emergency back-up braking system, it does not wish to imply that it is acceptable for a vehicle, after the parking brake knob has been pulled and the service brakes released, to roll a significant distance, such as the approximately 12 feet that would result from the "as much as one revolution of the braked wheels" mentioned in the Navistar petition. The agency is aware of two situations under which a vehicle might move while it is being parked on a grade. In the case of stopping and parking on an upgrade, there may be some "rock-back" as the braking force changes from rearward for stopping the vehicle to forward for holding the vehicle stationary on the upgrade. However, this is the last phase of stopping the vehicle rather than part of parking the vehicle. The second case involves some small vehicle movement, on the order of several inches, that can result during the transition from the service brake application, that is made to bring the vehicle to a stop, to the parking brake application that holds the vehicle stationary on the grade. This movement can result from the functioning of an anti-compounding valve that limits the simultaneous application of the service and parking brakes. During this transition, the level of torque that can be produced by the brakes changes. The torque produced at some period during the transition is less than that produced by either the initial service brake application or the final parking brake only application. This "valley" in brake torque output could result in the vehicle moving a few inches. However, NHTSA is not aware of any safety problem or customer complaints about loss of brake force during parking brake applications and believes that the phenomenon referred to by Navistar, i.e., the vehicle wheels rolling up to one full wheel revolution, is mainly a peculiarity of the test procedure or conditions used by Navistar.

The second petitioner, Volvo GM, raised several issues concerning the parking brake timing requirements. First, that company suggested that NHTSA's stated belief that the requirements would not affect parking brakes currently being sold was generally correct, but that the agency had overlooked heavy tandem trucks such as those used in refuse and dump/mixer type applications. Volvo GM submitted test results for two heavy tandem trucks, saying that "one exceeds the limit and the other does not contain compliance margins sufficient to accommodate manufacturing tolerances." The test results submitted by that company indicate that, for some of its vehicles, the spring brake chamber air pressure does not reach zero in three seconds. Volvo GM asked that the agency rescind the application of the requirement to tandem trucks with spring brakes.

NHTSA notes that while the data submitted by Volvo GM indicate that the spring brake chamber air pressure for some of that company's vehicles does not reach zero in three seconds, it does reach a very low level, i.e., less than 5 psi. The agency believes it is likely that the vehicles could meet the grade holding or draw bar test with such a low level of air pressure, and thus comply with the parking brake timing requirement. The proposed revision in the test, discussed above, would make it clear that a vehicle would be tested with whatever pressure remains at three seconds, and that the pressure need not actually reach zero within three seconds.

NHTSA does not believe that it would be appropriate to exempt heavy tandem trucks such as those used in refuse and dump/mixer type applications from the parking brake timing requirement. The agency believes that the parking brake systems of those vehicles, like those of other vehicles, should quickly generate retardation force in order to serve as a back-up emergency brake system. Nothing in the use or design of heavy tandem trucks suggests a need for such exemption. NHTSA notes that if further testing should indicate that the vehicles cited by Volvo GM do not comply with the proposed requirements, that company can easily ensure compliance by adding a quick release valve.

Another issue raised by Volvo GM concerns one of the test conditions

specified for the parking brake test, initial reservoir system pressure of 100 psi (for trucks and buses). The petitioner argued that use of a specific value is design restrictive. Volvo GM compared the situation to one addressed in a July 23, 1976 letter of interpretation to White Motor Corporation, which concerned Standard No. 121's service brake timing requirements. In that letter, NHTSA indicated that specified values for brake chamber pressures were not intended to require that a vehicle be designed to provide a certain level of brake chamber pressure. The agency stated the following:

> In response to your request for interpretation of [sections S5.3.3 and S5.3.4] in view of White's intent to use a lower air pressure than was commonly used in the past, the agency will utilize the stated 60-psi value or a value that is 70 percent of the maximum air pressure (measured by the NHTSA at the brake chamber), whichever is lower. In the case of release, the stated 95-psi value or the value that represents maximum air pressure (measured by the NHTSA at the brake chamber), whichever is lower, will be used. For purposes of this determination, the maximum air pressure in the brake chamber is that obtainable with full application *when the pressure in the service reservoir is at 100 psi.* (Emphasis added.)

NHTSA notes first that specification of an initial reservoir system pressure is necessary to ensure objectivity. If the parking brake timing test were run with different initial reservoir system pressures, there would be significant variation in test results. A 100 psi pressure was selected because it is representative of the brake reservoir system pressure of actual vehicles.

NHTSA does not believe that the situation for service brake application and release timing initial pressures, cited by Volvo GM, is equivalent to that for the parking brake timing test. For the service brake timing tests, 95 psi refers to brake chamber pressure, while the 100 psi in the parking brake timing test is the reservoir system pressure. A 100 psi pressure was specified because it is a common reservoir pressure specified in air brake system tests and is within the composite compressor cut-in/cut-out pressure range (85–120 psi) of most powered vehicles being manufactured today.

While Volvo GM requested that the 100 psi pressure test condition be removed, it did not suggest any other means of ensuring objective test results. Also, while the petitioner stated that the test condition is design restrictive, it did not argue that the test condition is unrepresentative or otherwise inappropriate for any current or planned vehicles. Accordingly, the revised parking brake timing test proposed by this notice continues to specify an initial reservoir system pressure of 100 psi.

Volvo GM also asked that NHTSA amend "Test Procedure TP–121." NHTSA notes that test procedure is not part of Standard No. 121. It is instead a document that the agency provides to compliance test contractors, which specifies how compliance with the standard is to be tested The agency routinely updates such documents as standards themselves are revised. Any enforcement action would, of course, need to be based on the applicable requirements of Standard No 121.

Based on the above, NHTSA is granting the Navistar petition and denying the Volvo GM petition. The agency believes that the proposed parking brake timing test will resolve Navistar's concern about "wrap-up." While NHTSA is not proposing to take the actions recommended by Volvo GM and is therefore denying that company's petition, it nonetheless believes that, as a consequence of clarifying the agency's initial intent with respect to whether parking brake chamber air pressure must reach zero within three seconds, the proposed test will likely resolve some of Volvo GM's concerns.

Release Performance; Accumulation of Actuation Energy

In addition to proposing requirements that are directly related to the petitions for reconsideration, NHTSA is proposing requirements concerning release performance and accumulation of actuation energy for parking brakes. The first of these would require that a vehicle s parking brakes not be releasable unless adequate energy is available to make a subsequent reapplication. The purpose of this requirement would be to prevent situations where parking brakes are released when the vehicle has no braking capability. The second proposed requirement would specify that an accumulation of energy sufficient to apply the parking brakes at least once be available to the parking brake system. Taken together, these proposed requirements would ensure a parking brake system that remains "fail-safe" in the event of other brake system failures, i.e., the parking brakes could not be released unless they were capable of being reapplied, and also, under the same conditions, would be capable of at least one reapplication.

While the proposed requirements are not now included in Standard No. 121, NHTSA notes that similar requirements are included in the Federal motor carrier safety regulations. See 49 CFR § 393.41(b) and § 393.41(c). NHTSA believes that all current parking brake systems meet the proposed requirements. The agency is proposing the requirements at this time in light of the possible development of new air applied, mechanically held parking brake systems. The Federal motor carrier safety regulations do not apply to all heavy vehicles, and NHTSA believes that performance along the lines of the proposal is highly desirable for safe operation of heavy vehicles.

Effective Date

The proposed amendments discussed above, other than those for release performance and accumulation of actuation energy, would become effective 30 days after publication of a final rule. Under the amendments, mandatory compliance with the new requirements would be required 180 days after publication. Until that time, manufacturers could comply with either the new requirements or the pre-1988 requirements which the new requirements would supersede. Permitting optional compliance with amendments that become effective at a later date would promote manufacturer flexibility without creating any adverse impacts. NHTSA does not believe that it would be necessary to permit optional compliance with the amendments adopted in March 1988, as the agency believes that the proposed amendments are so similar to those amendments that any vehicles meeting the March 1988 requirements would also meet the ones proposed by this notice.

NHTSA believes that all parking brakes currently being sold comply with these proposed amendments. Since any necessary certification could be accomplished by simple tests, the agency believes that 180 days would provide a sufficient time for that purpose. Moreover, if tests indicate that some few vehicles do not comply with the requirements, NHTSA believes that only necessary change would be the inclusion of an additional quick-release valve, at a cost of $5 to $10. The agency believes that the 180 day period would provide sufficient time for such a relatively simple design change.

The proposed requirements concerning release performance and accumulation of actuation energy would become effective 180 days after publication of a final rule. As indicated above, similar requirements are included in the Federal motor carrier safety regulations, and NHTSA believes that all current parking brake systems meet the proposed requirements. The

agency believes that a 180 day period would provide sufficient time for any necessary compliance testing, and, if necessary, for design changes to any vehicles that might not comply with the requirements.

Interpretative Amendment

Under S5.6.3.1 and S5.6.3.5 of Standard No. 121, parking brake systems must be capable of meeting minimum parking brake retardation requirements "with any single leakage-type failure, *in any other brake system,* of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing)." Emphasis added. NHTSA notes that air-applied mechanically held parking brake systems may incorporate a single brake chamber that is common to both the service and parking brake systems. Since a failure in such a brake chamber is a failure of the service brake system (as well as the parking brake system), it is a failure "in any other brake system," in the context of S5.6.3.1 and S5.6.3.5. In an interpretation letter to International Transquip Industries, Inc., dated April 9, 1986, NHTSA concluded that a diaphragm within a brake chamber is not a component of a brake chamber housing. The agency is proposing an amendment to incorporate this interpretation in the language of the standard. The proposed amendment would become effective 30 days after publication of a final rule. NHTSA notes that similar language is included in some of the other amendments proposed by this notice.

Regulatory Impacts

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not required. It is believed that all parking brakes currently being sold comply with the proposed amendments. If testing should show that a few vehicles do not comply with the proposed timing requirements, NHTSA believes that the only necessary change would be the inclusion of an additional quick-release valve, at a cost of about $5 to $10. If testing should show that a few vehicles do not comply with the proposed requirements related to release performance and accumulation of actuation energy for parking brakes, the agency again believes that only relatively minor changes would be needed to ensure compliance

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. As indicated above, no parking brakes currently being sold are believed to be affected by these amendments. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.6 would be revised to read as follows:

S5.6 *Parking brake system.* Each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of S5.6.1 or S5.6.2, at the manufacturer's option, and the requirements of S5.6.3, S5.6.4, S5.6.5, and S5.6.6. However, the trailer portion of any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer, shall meet the requirements of this section, or, at the option of the manufacturer, the requirements of § 393.43 of the title.

3. S5.6.3 through S5.6.3.5 of § 571.121 would be revised to read as follows:

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, the parking brake system in each vehicle manufactured before [date 180 days after publication of a final rule would be inserted] may meet either those requirements or the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), when the pressures in the vehicle's parking brake chambers are at the levels determined in S5.6.3.4

S5.6.3.2 A mechanical means shall be provided that, after a parking brake application is made with the pressures in the vehicle's parking brake chambers at the levels determined in S5.6.3.4, and all air and fluid pressures in the vehicle's braking systems are then bled down to zero, and without using electrical power, holds the parking brake application with sufficient parking retardation force to meet the minimum performance specified in S5.6.3.1 and in either S5.6.1 or S5.6.2.

S5.6.3.3 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of actuation of the parking brake control, the mechanical means referred to in S5.6.3.2 shall be actuated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line coupling is initiated, the mechanical means referred to in S5.6.3.2 shall be actuated. This requirement shall be met for trucks, buses and trailers both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system).

S5.6.3.4 The parking brake chamber pressures for S5.6.3.1 and S5.6.3.2 are determined as follows. For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), is introduced in the brake system; the parking brake control is actuated; and the pressures in the vehicle's parking brake chambers are measured three seconds after that actuation is initiated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), is introduced in the brake system; the front supply line coupling is vented to the atmosphere; and the pressures in the vehicle's parking brake chambers are measured three seconds after that venting is initiated.

S5.6.3.5 *(Optional requirement for vehicles manufactured before [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

4. S5.6.5 through S5.6.5.4 would be added to § 571.121 to read as follows:

S5.6.5 *Release Performance.* Effective [date 180 days after publication of a final rule would be inserted], each parking brake system shall meet the requirements specified in S5.6.5.1 through S5.6.5.4.

S5.6.5.1 For trucks and buses, with initial conditions as specified in S5.6.5.2, at all times after an application actuation of the parking brake control, and with any subsequent level of pressure, or combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, no reduction in parking brake retardation force shall result from a release actuation of the parking brake control unless the parking brakes are capable, after such release, of being reapplied at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without the engine on, and with and without any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system).

S5.6.5.2 The initial conditions for S5.6.5.1 are as follows. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5 6.5.3 For trailers, with initial conditions as specified in S5.6.5.4, at all times after actuation of the parking brakes by venting the front supply line coupling to the atmosphere, and with any subsequent level of pressure, or combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, the parking brakes shall not be releasable by repressurizing the supply line using the supply line portion of the trailer test rig (Figure 1) to any pressure above 70 psi, unless the parking brakes are capable, after such release, of reapplication by subsequent venting of the front supply line coupling to the atmosphere, at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system).

S5.6.5.4 The initial conditions for S5.6.5.3 are as follows. The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

5. S5.6.6 through S5.6.6.6 would be added to § 571.121 to read as follows:

S5.6.6 *Accumulation of Actuation Energy.* Effective [date 180 days after publication of a final rule would be

inserted], each parking brake system shall meet the requirements specified in S5.6.6.1 throuugh S5.6.6.6.

S5.6.6.1 For trucks and buses, with initial conditions as specified in S5.6.6.2, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), at the conclusion of the test sequence specified in S5.6.6.3.

S5.6.6.2 The initial conditions for S5.6.6.1 are as follows. The engine is on. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.6.3 The test sequence for S5.6.6.1 is as follows. The engine is turned off. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), is then introduced in the brake system. An application actuation of the parking brake control is then made. Thirty seconds after such actuation, a release actuation of the parking brake control is made. Thirty seconds after the release actuation, a final application actuation of the parking brake control is made.

S5.6.6.4 For trailers, with initial conditions as specified in S5.6.6.5, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), at the conclusion of the test sequence specified in S5.6.6.6.

S5.6.6.5 The initial conditions for S5.6.6.4 are as follows. The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

S5.6.6.6 The test sequence for S5.6.6.4 is as follows. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), is introduced in the brake system. A parking brake application is then made by venting the front supply line coupling to the atmosphere. Thirty seconds after the initiation of such venting, the parking brakes are released by repressurizing the supply line with the trailer test rig (Figure 1). Thirty seconds after the initiation of such repressurizing of the supply line, a final application of the parking brakes is made by venting the front supply line coupling to the atmosphere. This procedure is conducted either by connection and disconnection of the supply line coupling or by use of a valve installed in the supply line portion of the trailer test rig near the supply line coupling.

6. The second line of text at the bottom of Figure 1 would be revised to read as follows:

R—Regulator (set at 100 psi for service brake actuation tests; 95 psi for service brake release tests; 100 psi for parking brake tests in S5.6.3.3, S5.6.3.4, S5.6 5.4, and S5.6.6.5, and any pressure above 70 psi for parking brake test in S5.6.5.3).

Issued on February 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-2649 Filed 2-7-90; 8:45 am]

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49 CFR Part 571

[Docket No. 90-3; Notice 1]

RIN 2127-AA27

Federal Motor Vehicle Safety Standards Air Brake Systems; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems,* to revise the requirements for the performance of trailer pneumatic brake systems in the event of pneumatic system failure. The proposal would require several safety features to reduce the consequences of pneumatic system failure, while deleting the requirement for a separate reservoir capable of releasing the parking brakes. Some of the proposed requirements would also provide safeguards against undesirable trade-offs resulting from the deletion of that reservoir. Among other things, the agency is proposing to require a low pressure warning system that would indicate whether the pressure in any of the trailer's service brake reservoirs is below 60 p.s.i. The system would include a lamp located on the trailer. Some of the requirements for the lamp would be specified in Standard No. 121; the rest, in Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.*

DATES: Comments must be received on or before April 9, 1990. This proposal would become effective one year after publication of a final rule in the **Federal Register**. Optional compliance would be permitted effective 30 days after publication.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION:

Background

Air-braked trailers have two types of brakes: service brakes used for normal stopping in traffic and parking brakes used both for parking and stopping the trailer in the event of a breakaway. The parking brakes may also be used to help stop the vehicle in the event of a loss of trailer service braking capability. The service brakes are applied by the driver's actuating a foot-controlled treadle valve. This transmits a pressure signal, proportional to the foot pressure on the treadle valve, via the control line to open the service relay valve(s). The opening of the relay valve(s) allows air from the brake reservoirs to pressurize the brake chambers (to a level that is proportional to the pressure in the control line), applying the brakes in proportion to the foot pressure on the treadle valve. The pressure in the brake reservoirs is supplied via the brake supply line.

Manual application of the parking brakes occurs when the driver actuates

a hand-operated parking control valve, venting the supply line. The venting of the supply line results in application of the parking brakes by means of spring pressure or air pressure. Automatic application of the parking brakes can occur in two situations. First, if the pressure in the trailer supply line falls below a certain level, tractor valving closes and vents the supply line to the trailer. The venting of the trailer supply line results in application of the parking brakes. Second, if the trailer should break away from the tractor, the venting due to breaking of the trailer supply line hose results in application of the parking brakes.

On July 23, 1981, NHTSA published in the Federal Register (46 FR 37952) a notice of proposed rulemaking (NPRM) to amend Standard No. 121, *Air Brake Systems*, by deleting the requirement that trailers have a separate reservoir capable of releasing the parking brakes (section S5.2.1.1). The rulemaking had been initiated in response to a petition for rulemaking submitted by Berg Manufacturing Company.

The purpose of the separate reservoir requirement is to provide a means for releasing the parking brakes once they have been automatically applied, thereby avoiding safety hazards caused by a trailer blocking a road after an automatic application. However, the agency believed that this purpose could satisfactorily be met by other means.

Several commenters opposed the proposal, expressing concern that it would permit trailer parking brake systems that would place increased demands on the tractor air system for releasing the parking brakes; not warn the driver in the event of trailer brake drag and brake fade; not be compatible with earlier systems if they were intermixed in doubles and triples combinations; and utilize a single reservoir on tandem axle trailers, thereby resulting in degraded performance.

NHTSA conducted research to evaluate those issues. The research looked at designs currently in use on trailers and ones which manufacturers indicated would likely be sold if the July 1981 proposal were adopted as a final rule. The results of that research are contained in a report entitled "NHTSA Heavy Duty Vehicle Research Program—Report Number 3: Evaluation of Parking and Emergency Pneumatic Systems on Air Braked Trailers," May 1985 (DOT HS 806 757).

The agency's research program identified several safety features that would be desirable for pneumatic brake systems on trailers. See pp. 64–68 of the above-referenced report. While none of the current systems tested exhibited all of these desirable features, it appeared that only minor changes would be required in those systems to provide these features. The designs which manufacturers indicated would likely be sold if the July 1981 proposal were adopted as a final rule lacked these desirable features to a much greater degree.

This notice supersedes the July 1981 NPRM. As discussed below, NHTSA is now proposing to amend Standard No. 121 to require some of the safety features identified by its research. As part of this action, the agency is continuing to propose to delete the requirement for a separate reservoir. The agency believes that the purpose of that requirement would be met by another part of this proposal. One desirable effect of deleting the requirement for a separate reservoir would be that the net cost impact of this rulemaking is likely to be small cost savings for many vehicles, and only slight cost increases for other vehicles.

Pneumatic System Failure

Pneumatic system failure on trailers can result in the reduction or loss of trailer braking capability, thereby causing serious safety hazards. Since pneumatic system failure does sometimes occur on trailers, their brake systems should perform in such a way as to reduce the consequences of such failure.

One desirable safety feature identified by the research for trailer pneumatic brake systems is use of a split service brake system, such as axle-by-axle braking, which entails a separate reservoir for each portion of the system. If split system performance is provided, a single failure in the vehicle's brake system only affects the service braking capability in one portion of the system. Thus, braking in the remaining portion(s) remains operational. Many current trailers employ axle-by-axle braking. Another possible system would be a diagonal split arrangement, and the agency is also aware of currently available antilock braking systems which employ a "side-to-side" split in the service brake system.

Without a split service brake system, it is possible that a single leakage-type failure in the service brake system, e.g., a reservoir failure or certain types of valve failure, could result in total loss of trailer service braking capability. If this occurred, the trailer would not assist in stopping the vehicle, and "trailer push" and jackknifing could result, especially with a heavily loaded trailer.

While the proposed low pressure warning system, discussed below, would warn the driver of such failures, the warning would not occur until the driver applied the vehicle's brakes. Also, some types of leakage-type failures in the service brake system, such as failures of a service brake hose or service brake chamber diaphragm, could significantly degrade service braking capability without sufficiently depleting reservoir pressure, during normal driving, to activate the low pressure warning system. Thus, NHTSA believes that a split service brake system and a low pressure warning system complement each other under various pneumatic failure conditions.

Given the size and weight of multi-axle trailers, NHTSA tentatively concludes that there is a particular safety need for these vehicles to retain some braking capability in the event of a pneumatic system failure. The agency is therefore proposing to require that no single leakage type failure result in a loss of service braking capability at wheels which contribute more than 50 percent of the load-carrying capacity of the axles of the trailer. In order to meet the proposed requirement, manufacturers would need to provide a split service brake system.

While Standard No. 121 does not currently require a split service brake system for trailers, its requirement for a separate reservoir capable of releasing the parking brakes does facilitate such capability. A large portion of the cost associated with a split service brake system is the need for a reservoir for each axle. Some current air brake systems for tandem axle trailers use two reservoirs to satisfy the standard's reservoir requirements, including that of section S5.2.1.1, in such a way as to provide axle by axle braking. Thus, the existing separate reservoir requirement significantly reduces the competitive cost disadvantage associated with providing axle-by-axle braking.

NHTSA believes that a requirement for split service braking capability is justified on its own merits. The agency notes that the plumbing needed for this capability is less complex than that needed for a protected reservoir. Thus, for tandem axle trailers, the weighted average net cost effect of adding a requirement for a split service brake system, while deleting the requirement for a protected reservoir, would be essentially zero.

In order to ensure adequate split service braking capability, each reservoir must have adequate reserve volume for its brakes. Therefore, NHTSA is proposing to require that the total volume of each service reservoir be at least eight times the combined

volume of all service brake chambers serviced by that reservoir at the maximum travel of the pistons or diaphragms of those service brake chambers.

NHTSA is not proposing at this time to require a split service brake system on single axle trailers. The agency notes that single axle trailers are largely used in multiple trailer combinations. In such use, the percentage of the combination's braking capability that is lost if the brakes on one of the single axle trailers fail is much less than if the brakes of the trailer in a single trailer combination fail. Thus, the benefits of requiring a split service brake system on single axle trailers would likely be lower than for multi-axle trailers. For purposes of possible future rulemaking, however, the agency requests comments on the possibility of requiring that no single leakage type failure other than those than that would result in a low pressure condition in the trailer's service brake reservoir without application of the trailer's service brakes result in loss of service braking capability on more than one wheel. In order to meet such a requirement, manufacturers would need to provide a split service brake system from the service relay valve to the foundation brakes. This would necessitate the development and use of a new type of service relay valve that would incorporate an internal "split" that would isolate each wheel's service brake from failures of the brake hose and chamber diaphragm for the other wheel. NHTSA is aware of antilock braking systems for single axle trailers that are capable of independently controlling the air pressure at each of an axle's brakes. Such an air brake relay valve incorporating an internal "split system" could be used to meet a requirement along these lines.

Another desirable safety feature identified by NHTSA's research relates to the ability of the driver to detect trailer pneumatic system failure. Unless the driver can detect such failure, he or she may operate the vehicle without the knowledge that the trailer has little or no service braking capability.

Standard No. 121 requires truck manufacturers to provide a warning signal whenever the air pressure in the service reservoir system is below 60 p.s.i. However, NHTSA's research indicated that the low pressure warning devices, which are located in the reservoirs of current production tractors, are often unable to detect trailer pneumatic system failures because the relatively high restrictions in the plumbing from the tractor's reservoirs to the trailer's service brake system so limit the air flow that the warning devices cannot sense those remote failures. Moreover, drivers do not appear to be able to detect pneumatic system failures by other means, such as by sensing changes in the "feel" of the vehicle. When a trailer pneumatic system failure occurs, there can often be a partial application of the parking brakes. However, tests with three unsuspecting drivers indicated that all three were unaware of spring brake drag on both axles of a tandem axle trailer sufficient to cause brake temperatures to exceed 500 °F. As discussed later in this notice, the brake fade associated with such brake temperatures can contribute to, or increase the severity of, many types of accidents.

In order to enable drivers to detect trailer pneumatic system failure, NHTSA is proposing to require a low pressure warning system that would indicate whether the pressure in any of the trailer's service brake reservoirs is below 60 p.s.i. If the warning were to be provided to the driver by means of a telltale on the instrument panel, e.g., by the air pressure warning signal already located in tractors, it would be necessary to add an additional electrical connection between tractors and trailers. An alternative means is to provide the warning by means of a lamp located on the left side of the trailer, which would be visible to the driver by using the driver side rearview mirror. NHTSA tentatively favors this latter approach, which offers the advantages of lower cost and of providing immediate safety benefits where a "new" trailer is used with an "old" tractor. (If the warning were dependent on a new electrical connection, it would only be effective when a tractor incorporating the new connection was used.)

The proposed warning system would be tied into the trailer's stop lamp circuit, enabling the driver to check the air pressure level in the trailer's service brake reservoirs by applying the service brakes. Upon application of the brakes, the warning lamp would be continuously illuminated unless the air pressure was below 60 p.s.i., in which case it would flash. The continuous illumination of the warning lamp upon application of the brakes would provide a regular check of the bulb function, i.e., condition of the bulb, its attendant wiring and whether the system is powered; while the flashing of the lamp would attract the driver's attention in the event of low air pressure. The lamp would be located on the left side of the trailer, as close to the front and as near to the top as possible, but not more than 96 inches above the road surface. NHTSA is proposing that the color of the lamp be amber and that it meet the photometric requirements specified by Society of Automotive Engineers (SAE) Recommended Practice J592e (July 1972) for clearance lamps. The agency is proposing to require that the lamp flash at a rate of between 150 to 200 flashes per minute. NHTSA believes that the proposed location and flash rate requirements would clearly differentiate the warning lamp and that no safety problem would result from an oncoming driver possibly mistaking the warning lamp for a turn signal.

NHTSA believes that there are a number of circumstances under which the proposed warning lamp would be useful. For example, the lamp would enable drivers to check the pneumatic system both before a trip and during a trip, by applying the brakes. If a small leak is present and multiple brake applications draw the service reservoir below 60 p.s.i., the flashing lamp would attract the attention of the driver and warn him or her of the problem. Also, since it is possible to move a trailer without the complete charging of its service brake reservoirs, a driver could apply the brakes lightly when the vehicle is "unparked" to check whether the service reservoir pressure is above 60 p.s.i.

In developing this proposal, NHTSA has considered the issue of "photic driving." This issue concerns potential adverse reactions in the central nervous system from regularly flashing lights, similar to epileptic seizures. These are termed "photic driving" and can occur in persons not otherwise prone to epilepsy. NHTSA has previously considered this issue in the context of rulemaking concerning modulating headlamps on motorcycles. See 50 FR 29676, July 22, 1985. NHTSA has tentatively concluded that warning lamps meeting the proposed requirements would not result in problems related to "photic driving." As indicated in the notice concerning modulating headlamps, two significant aspects of the phenomenon are the pulse rate of the light and the amount of contrast between the light and the background. From the available studies on the subject, it appears that people are most likely to be affected if a light flashes at about 10 flashes per second (600 per minute) and when the background is very dark. The proposed flash rate is well below that where photic driving is mostly likely to occur. Also, while the warning lamp would flash at night as well as in daylight, the proposed photometric requirements would ensure that the lamp is not overly bright, thereby reducing the amount of

contrast between the light and the background.

Comments are sought concerning the proposed location, photometric requirements and color of the lamp. The agency specifically requests comments on whether the proposed requirements would ensure sufficient brightness for the lamp to be visible to the driver in daylight conditions and whether it could be distracting to the truck driver or confusing to other drivers, particularly at night. Are the requirements appropriate for doubles and triples trailers? For example, would a light on doubles trailers which is bright enough to be seen by a driver up to 60 feet away in the daytime be distracting to the driver when five feet away at night? With respect to ensuring daytime visibility, should features other than light intensity and color be considered, such as means for shielding the lamp to increase contrast under bright daylight conditions? Depending on the comments, the agency may consider alternative requirements for the proposed lamp. The agency also requests comments on whether the low pressure warning requirements should apply to trailer converter dollies. Comments are sought on potential problems with regard to the location and mounting of the warning lamp and of possible in-use damage to such a lamp.

NHTSA notes that since activation of the proposed warning system would be required when the trailer's stop lamp circuit is powered and since the warning lamp itself would be required to be illuminated (either continuously or flashing) whenever the trailer's stop lamp circuit is powered, manufacturers would for practical purposes need to power the warning system by the stop lamp circuit. The proposed requirements would not, however, prevent manufacturers from powering the warning system by a redundant means, such as the seven pin connector auxiliary circuit. Thus, manufacturers could voluntarily provide a low pressure warning when the stop lamp circuit is not powered.

As an alternative to the proposed mode of operation of the warning lamp discussed above (continuous illumination on application of the brakes if air pressure is at or above 60 p.s.i./ flashing on application of the brakes if air pressure is below 60 p.s.i.), NHTSA is also considering simply requiring that the lamp be continuously illuminated in the event of low air pressure, without a bulb check function. This alternative would be simpler and would eliminate any possible confusion of the warning lamp with turn signals. Also, since the lamp would only be illuminated in the event of low air pressure rather than on each brake application, there would be less potential for the lamp to be distracting. However, unlike the mode of operation discussed earlier, this alternative would not provide an automatic check of lamp function. Thus, unless a driver actively checked the lamp function, he or she might drive unaware that the bulb was burned out or the warning system unpowered due to a poor electrical connection between the tractor and trailer. In order to check lamp function, drivers would need to apply the brakes several times in order to bring air pressure below 60 p.s.i. The agency requests comments on this alternative and notes that while it is not included in the proposed regulatory text, it could be adopted for purposes of a final rule.

NHTSA also requests comments on alternative methods of providing the driver with a low pressure warning signal from trailers, including methods which might require an additional electrical connection between tractors and trailers.

In order to avoid possible inadvertent activation of the trailer low pressure warning system, NHTSA is proposing to require the air compressor to begin functioning whenever the air pressure falls below 85 p.s.i. Current practice for tractors and trucks capable of towing trailers is for compressor cut-in pressures to be at or above that level. Therefore, no changes are believed to be necessary to meet this requirement, and no compatibility problems would result from the use of "old" tractors with "new" trailers.

As indicated above, there can often be a partial application of the parking brakes when a trailer pneumatic system failure occurs. If the vehicle is driven in that condition, high brake temperatures can occur, leading to brake fade which can contribute to, or increase the severity of, many types of accidents.

The agency's research indicated that small pressure reductions (six to 13 p.s.i.) below the point at which drag starts to occur can result in brake drag at 60 mph that produces brake temperatures of 500 °F. and a 26 to 29 percent loss in brake effectiveness. Greater pressure reductions would produce even higher brake temperatures and increased brake fade. If brake temperatures become sufficiently high, wheel fires could occur.

Runaway accidents could also occur as a result of brake drag-induced fade. If a driver attempted to descend a steep hill under such conditions, the increased demands on the tractor's brakes could cause their fading, resulting in a runaway. Jackknife accidents are also a possible result. The reduction in trailer brake output attributable to fade could so alter the overall brake distribution of the combination as to lead to lockup of the tractor drive axles. This could cause yaw instability which, aggravated by "trailer push," could lead to a jackknife accident. Finally, the increased stopping distance associated with brake fade would be a serious hazard.

Given the safety consequences of brake drag-induced fade caused by partial application of the parking brakes, it is desirable to make the occurrence of that vehicle condition less likely. The agency is proposing two related requirements to achieve this result. First, any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber housing) would not be permitted to result in the pressure in the supply line falling below 70 p.s.i. Second, whenever the air pressure in the supply line is 70 p.s.i. or higher, no automatic application of the parking brakes would be permitted, except in the case of a failure of a component of the parking brake system or brake chamber housing. These requirements would together ensure that most pneumatic failures would not result in brake drag.

NHTSA notes that, in addition to causing safety problems, spring brake drag can also result in excessive brake lining wear and possible damage to brake drums, due to high brake temperatures. An added benefit of the proposed requirements could therefore be decreased maintenance costs. The agency requests comments on how often this problem occurs in non-accident situations and estimates of the resulting increased maintenance costs.

Proposed Deletion of Separate Reservoir Requirement

As indicated above, NHTSA is continuing to propose to delete the requirement for a separate reservoir capable of releasing the parking brakes In the July 1981 NPRM, the agency stated the following:

> All existing brake systems in compliance with the air brake standard allow the release of the parking brakes with the pressurized tank.
>
> However, in order for the tank to operate, most systems require a signal to be sent to the tank. Typically, that signal comes from the tractor air supply. Accordingly, current systems require the use of tractor air to actuate the reservoir tank. The Berg petition and proposal correctly raise the question that if tractor service air is already required why

is it not possible to allow the entire release of the parking brakes by use of tractor service air * * *. 46 FR at 37953.

The July 1981 NPRM included a performance specification regarding the ability to remove a trailer with a failure in its service brake system from the roadway. Under the condition of service brake system failure, that proposal would have permitted creation of a level of drag, on one axle only, up to a force equivalent to five percent of the total of the trailer's GAWR. While this limitation would have ensured that a trailer could easily have been moved, the agency's subsequent research indicated that the proposed level of permitted drag could result in high brake temperatures and hence fade, without the driver's knowledge.

Now, however, NHTSA is proposing requirements that would ensure that most types of trailer pneumatic failure would not result in brake drag, as well as ones to provide the driver with a warning when pneumatic failure occurs. In addition to addressing these safety concerns, the proposed requirements would also ensure sufficient air pressure in the supply line to enable release of a trailer's parking brakes once they have been applied.

NHTSA notes that one consequence of direct supply line release of parking brakes is that a trailer could be moved without the complete charging of its service brake reservoirs. This is also possible, however, under the current requirements. Also, the proposed warning system would enable a driver to determine whether the reservoirs are charged. The agency specifically requests comments on the potential safety risks associated with the possibility of a trailer being moved without the reservoirs being charged and whether systems built to the proposed requirements would make that possibility more likely. Comments are also requested on whether consideration should be given for a requirement specifying the maximum time allowed, after parking brake release, to pressurize the trailer's service brake reservoirs.

The proposed amendments would become effective one year after publication of a final rule in the Federal Register. The agency believes that a one-year period of time would enable manufacturers to redesign their vehicles to meet the proposed requirements. Optional compliance would be permitted effective 30 days after publication. This could result in additional safety benefits by facilitating the earlier redesign of some vehicles.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory procedures. A preliminary regulatory evaluation describing those effects is available in the docket. While manufacturers would need to modify their trailers to meet the proposed requirements, such modifications would be relatively simple, utilizing components which are currently available and easily obtained.

The preliminary regulatory evaluation concludes that most new trailers would be equal or slightly lower in cost to build, with potential further savings accruing from net operating and accident cost reductions. Production costs for a typical single-axle trailer would be reduced by about $41, and weighted average costs for tandem-axle trailers would not be changed. While there would be cost savings of as high as $25 for some current tandem-axle trailers, there would be net cost increases of about $2 for other tandem-axle trailers. The details of these cost estimates are set forth in the preliminary regulatory evaluation. Based on information from the Current Industrial Reports (Series: M37L), U.S. Bureau of Census and Truck Trailer Manufacturers Association, it is estimated that the proposed requirements could affect approximately 135,000 tandem axle trailers and 37,000 single axle trailers, per year.

A relatively small number of trailers with more than two axles, estimated to be less than 5,000, are produced each year. The proposal could result in slight cost savings for each of these trailers.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. As discussed above, the proposed requirements could be met by relatively simple modifications, with small cost savings for some vehicles and small cost increases for other vehicles. The potential cost impacts would not significantly affect the purchase price of a trailer. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments.

The agency has also considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket

supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Table I would be amended by adding at the end of the table the following entries under the columns indicated: "Low air pressure warning lamp [5]" (first column—Item), "Not required" (second column—Multipurpose passenger vehicles, trucks, and buses), "1 amber" (third column—Trailers), "J592e, July 1972 (Clearance lamp portion)" (fourth column—Applicable SAE standard or recommended practice (See S6 for subreferenced SAE materials)).

3. Table I would be amended by adding the following footnote, designated number 5: "See S5.1.1.____."

4. Table III would be amended by adding at the end of the table the following entries under the columns indicated: "Low air pressure warning lamp [6]" (first column—Item), "Not required" (second column—Passenger cars, multipurpose passenger vehicles, trucks and buses), "1 amber" (third column—Trailers), "Not required" (fourth column—Motorcycles), "J592e, July 1972 (Clearance lamp portion)" (fifth column—Applicable SAE standard or recommended practice (See S6 for subreferenced SAE materials)).

5. Table III would be amended by adding the following footnote, designated number 6: "See S5.1.1.____."

6. S5.1.1.____ would be added to read as follows: S5.1.1.____ Trailers not required to comply with S5.2.3 of 49 CFR 571.121 need not be equipped with a low air pressure warning lamp.

7. Table II would be revised by adding at the end of the table the following entries under the columns indicated: "Low air pressure warning lamp" (first column—Item), "Not required" (second column—Location on Multipurpose passenger vehicles, trucks, and buses), "On the left side—1 amber lamp as close to the front as practicable and mounted so that the H–V axis of the lamp is parallel to the longitudinal axis of the trailer, and the usual vertical axis of the lamp is parallel to the road surface." (third column—Location on Trailers), "As high on the vehicle as practicable but not more than 96 inches." (fourth column—Height above road surface measured from center of item on vehicle at curb weight).

§ 571.121 [Amended]

8. S5 1.1.1 would be added to read as follows: S5.1.1.1 *Air compressor governor cut-in pressure.* Effective [date one year after publication of a final rule would be inserted], the air compressor governor cut-in pressure shall be greater than 85 p.s.i.

9. S5.2.1 through S5.2.1.5 would be revised to read as follows: S5.2.1 *Reservoirs.* One or more reservoirs to which the air is delivered from the towing vehicle.

S5.2.1.1 For vehicles manufactured before [date one year after publication of a final rule would be inserted], total service reservoir volume shall be at least eight times the combined volume of all service brake chambers at maximum travel of the pistons or diaphragms. For vehicles manufactured on or after [date one year after publication of a final rule would be inserted], the total volume of each service reservoir shall be at least eight times the combined volume of all service brake chambers serviced by that reservoir at the maximum travel of the pistons or diaphragms of those service brake chambers. However, the reservoirs on a heavy hauler trailer and on the trailer portion of an auto transporter need not meet the requirements specified in S5.2.1.1.

S5.2.1.2 Each reservoir shall be capable of withstanding an internal hydrostatic pressure of 500 p.s.i. for 10 minutes.

S5.2.1.3 Each reservoir shall have a condensate drain valve that can be manually operated.

S5.2.1.4 Each service reservoir shall be protected against loss of air pressure due to failure or leakage in the system between the service reservoir and its source of air pressure by check valves or equivalent devices.

S5.2.1.5 For vehicles manufactured before [date one year after publication of a final rule would be inserted], a reservoir shall be provided that is capable, when pressurized to 90 p.s.i., of releasing the vehicle's parking brakes at least once and that is unaffected by a loss of air pressure in the service brake system. This requirement need not be met if the vehicle meets the requirements specified in S5.1.1.1, the second sentence of S5.2.1.1, S5.2.3 through S5.2.3.2 (including the referenced requirements in 49 CFR 571. 108), and S5.8.1 through S5.8.4, notwithstanding the effective date of those requirements.

10. S5.2.3 through S5.2.3.2 would be added to read as follows: S5.2.3 *Low Air Pressure Warning System.* Trailers manufactured on or after [date one year after publication of a final rule would be inserted], shall be equipped with a warning system that is activated whenever the pressure in any of the trailer's service brake reservoirs falls below 60 p.s.i. and the trailer's stop lamp circuit is powered. The warning system shall incorporate the low air pressure warning lamp required in Tables I or III of 49 CFR 571.108. Additional circuits may be used to provide redundant sources of electrical power to the warning system.

S5.2.3.1 *Low Air Pressure Warning Signal.* Whenever the warning system required by S5.2.3 is activated, the low air pressure warning lamp required in Tables I or III of 49 CFR 571.108 shall flash at a rate of between 150 and 200 flashes per minute.

S5.2.3.2 *Low Air Pressure Warning Lamp Check Function.* Whenever the trailer's stop lamp circuit is powered and the low air pressure warning system required by S5.2.3 is not activated, the low air pressure warning lamp required in Tables I or III of 49 CFR 571.108 shall be continuously illuminated as a check of the bulb and electrical system.

11. S5.8 would be revised to read as follows: S5.8 *Trailer Pneumatic System Failure Performance.* Each trailer shall meet the requirements of S5.8.1 through S5.8.4.

12. S5.8.1 through S5.8.4 would be added to read as follows: S5.8.1 *Emergency braking capability.* Each trailer other than a trailer converter dolly shall have a parking brake system that conforms to S5.6 and that applies with the force specified in S5.6.1 or S5.6.2 when the air pressure in the supply line is at atmospheric pressure. A trailer converter dolly shall have, at the manufacturer's option, (a) a parking brake system that conforms to S5.6 and that applies with the force specified in S5.6.1 or S5.6.2 when the air pressure in the supply line is at atmospheric pressure, or (b) an emergency system that automatically applies the service brakes when the service reservoir is at any pressure above 20 lb/in^2 and the supply line is at atmospheric pressure. However, and any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer shall meet the requirements of S5.8.1 or, at the option of the manufacturer, the requirements of § 393.43 of this title.

S5.8.2 *Retention of Service Braking Capability.* Effective [date one year after publication of a final rule would be inserted], no single leakage-type failure in any brake system, of a part designed to contain compressed air or brake fluid (except for a failure that results in the loss of the capability to transmit the service brake control air pressure signal to the trailer's service brake system, or a failure of the trailer's supply line that results in application of the trailer's emergency brake system as required in S5.8.5.1) shall result in the total loss of service braking capability at wheel positions that contribute more than 50 percent of the load-carrying capacity of the axles of the trailer.

S5.8.3 *Supply Line Pressure Retention.* Effective [date one year after publication of a final rule would be inserted], any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber housing) shall not result in the pressure in the supply line falling below 70 p.s.i., measured at the forward trailer supply coupling. A trailer shall meet the above supply line pressure retention requirement with its brake system connected to the trailer test rig shown in Figure 1, with the reservoirs of the trailer and test rig initially pressurized to 100 p.s.i., and the regulator of the trailer test rig set at 100 p.s.i.

S5.8.4 *Automatic Application of Parking Brakes.* Effective [date one year after publication of a final rule would be inserted], with an initial reservoir system pressure of 100 p.s.i. and initial supply line pressure of 100 p.s.i., and if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, and with any subsequent single leakage type failure in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), whenever the air pressure in the supply line is 70 p.s.i. or higher, the parking brakes shall not provide any brake retardation as a result of complete or partial automatic application of the parking brakes.

13. The second line of text at the bottom of Figure 1 would be revised to read as follows: R—Regulator (set at 100 p.s.i. for service brake actuation tests, 95 p.s.i. for service brake release tests, and 100 p.s.i. for supply line pressure retention test).

Issued on February 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–2848 Filed 2–7–90; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 55, No. 27
Thursday, February 8, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Virginia Sun-Cured (Type 37), and Cigar-Filler and Cigar-Binder (Types 42-44; 53-55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1990, national marketing quotas for Cigar filler and binder (types 42–44, 53–55) tobacco for the 1990–91, 1991–92, and 1992–93 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), Virginia sun-cured (type 37), and cigar-filler and cigar-binder (types 42–44; 53–55) kinds of tobacco for the 1990–91 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATES: Comments must be received on or before February 20, 1990, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in room 3741–South Building, 14th and Independence SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

Prior documents in this proceeding: Notice of Hearing—Issued September 18, 1989, and published in the Federal Register on September 28, 1989 (54 FR 39800).

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases, Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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

Public Hearings

During the period October 3, 1989, to October 5, 1989, four public hearings were held to determine whether or not producers of fire-cured (types 22–23) tobacco and/or producers of dark air-cured tobacco preferred quotas on an acreage basis or a poundage basis. About 75 percent of the dark air-cured producers and other interested persons favored poundage quotas, but only 25 percent of fire-cured producers and other interested persons favored poundage quotas. Accordingly, quotas for fire-cured tobacco will remain on an acreage basis for the 1990–91 marketing year. For dark air-cured tobacco, producers will vote in a referendum to decide whether quotas will be based on pounds or acres. This determination will be handled in a separate notice.

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to cigar filler and binder (types 42–44 & 53–55) tobacco, the Secretary of Agriculture must proclaim by March 1, 1990, the respective national marketing quotas for the 1990–91, 1991–92, and 1992–93 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, a referendum of farmers engaged in the 1989 production of this kind of tobacco to determine whether they favor or oppose marketing quotas for such years. For cigar filler and binder (types 42–44 & 53–55) tobacco the 1989–90 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for this kind of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22–23), Virginia sun-cured, and cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos for the 1990–91 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments, less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The four kinds of tobacco to which this notice applies account for about 2 percent of the total U.S. tobacco production.

Section 312(b) of the Act provides that the Secretary shall determine and announce, not later than the first day of March 1990, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1990–91 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1991–91 national marketing quotas may, not later than March 1, 1990, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The aggregate reserve supply level for the 1989–90 marketing year for the 4 kinds of tobacco discussed in this notice was determined to be 152 million pounds (54 FR 26064). The proposed reserve supply level for the 1989–90 marketing year will range between 150 million and 200 million pounds. The aggregate total supply for the 1989–90 marketing year is 163 million pounds based on carryover of 120 million and production of 43 million pounds.

Section 301(B)(15) of the Act defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Number 118 (7 CFR part 30) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13 & 14;
Fire-cured tobacco, comprising type 21;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar binder tobacco, comprising types 42, 43, 44, 45, 51, 52, 53, 54 & 55; and
Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) of the Act also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has issued a determination (15 FR 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price support. Also pursuant to such authority, the Secretary has issued a determination (22 FR 367) that beginning with the 1957-58 marketing year, cigar-binder (types 51–52) shall be treated as a separate kind of tobacco for purposes of marketing quotas and price support Type 45 tobacco is no longer grown. No further action under this section is conteplated at this time.

Section 312(c) of the Act provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1990–91 marketing year:

1. With respect to fire-cured (type 21), fire-cured (types 22–23), Virginia sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 150 and 200 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1990–91 marketing year, within an aggregate range of 40 million-55 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggregate range of 80 and 400 acres.

2. With respect to cigar filler and binder (types 42–44 & 53–55) tobacco:

a. The date or period of the referendum for determining whether quotas will be in effect for the 1990–91, 1991–92, and 1992–93 marketing years for such kinds of tobacco; and

b. Whether the referendum should be conducted at polling places rather than by mail ballot (See 7 CFR part 717).

Authority: 7 U.S.C. 1301, 1312 and 1313.

Dated: February 5, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90–2966 Filed 2–5–90; 12:46 pm]

BILLING CODE 3410-05-M

National Marketing Quota Dark Air-cured (Types 35–36) Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determination.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to determine and announce by March 1, 1990, the national marketing quota for dark air-cured tobacco for the 1990–91 marketing year. In addition, a referendum will be conducted to determine whether producers prefer to continue marketing quotas on an acreage basis or to begin quotas on a poundage basis. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for dark air-cured tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATES: Comments must be received on or before February 20, 1990, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741-South Building, 14th and

Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736, South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

Prior documents in this proceeding: Notice of Hearing-Issued September 18, 1989, and published in the Federal Register on September 26, 1989, (54 FR 39800).

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures establishes to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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

At the request of producers and other interested person, the Secretary conducted four public hearings to ascertain whether producers of dark air-cured tobacco preferred marketing quotas on an acreage basis or a poundage basis. In addition to the comments received directly from the hearing, written responses were collected from producers and interested parties with respect to this issue. Because 74.6 percent of the 465 responses favored poundage quotas for dark air-cured tobacco, a referendum of farmers engaged in the 1989 production for this kind of tobacco will be held within 30 days after proclamation of the national marketing quotas on a poundage basis.

If more than 50 percent of producers favor marketing quotas on a poundage basis, then marketing quotas will be determined on a poundage basis for the 1990–91, 1991–92, and 1992–93 marketing years. If less than 50 percent of producers vote in favor of marketing quotas on a poundage basis, then marketing quotas will be determined on an acreage basis for the 1990–91 marketing year, and producers will have another referendum for the three marketing years beginning 1991–92 on an acreage basis.

If marketing quotas on a poundage basis have been in effect for such kind of tobacco, the Secretary shall, not later than March 1 of the last three consecutive marketing years for which such quotas are in effect for such kind of tobacco, proclaim a national marketing quota for such kind of tobacco for the next three succeeding marketing years. In addition the Secretary shall conduct public hearings to determine whether producers favor national marketing quotas on a acreage basis or on poundage basis and shall proclaim the quota on the basis he determines most producers of such kind of tobacco favor. Within 30 days of the proclamation, the Secretary shall conduct a referendum of producers engaged in the production of such kind of tobacco harvested immediately prior to the holding of the referendum to determine if such quotas are favored for the next three succeeding marketing years. If more than 50 percent of the producers voting in such referendum oppose the national marketing quotas, then the Secretary shall announce the results and no marketing quotas or price support will be in effect for such kind of tobacco and the national marketing quotas so proclaimed will not be in effect for the next three succeeding marketing years. If at least 50 percent of the producers voting in such referendum favor the national marketing quotas, such quotas will be in effect and price support will be available to eligible producers.

Marketing quotas on a acreage or poundage basis, less any reserves, shall be apportioned among old farms. Reserves shall be apportioned for use in: (1) Establishing acreage allotments or poundage quotas for new farms, and (2) making corrections and adjusting inequities in old farm allotments or poundage quotas.

Since producers have a choice between marketing quotas on an acreage basis or a poundage basis, and because acreage allotment determinations differ slightly from poundage quota determinations, both methods of determinations are discussed below.

Acreage Determination

Section 312(b) of the Act provides that the Secretary shall determine and announce, not later than the first day of March 1990, with respect to dark air-cured tobacco the amount of the national marketing quota which will be in effect for the 1990–91 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1990–91 national marketing quota so announced may, not later than March 1, 1990, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed and to apportion through local committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

Poundage Determination

Section 319(c) of the Act defines "national marketing quota" for various kinds of tobacco including dark air-cured (types 35–36) for a marketing year as the amount of that kind of tobacco produced in the United States which the Secretary estimates will be used domestically and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The maximum, downward adjustment is 5

percent of estimated domestic use and exports.

For the 1990–91 marketing year, total use for dark air-cured (types 35–36) tobacco is estimated to be 12 million pounds.

National Average Yield Goal

The Act provides that when a marketing quota program for this kind of tobacco is first established under section 319(c), such farm yields determined with respect to dark air-cured (types 35–36) tobacco shall be adjusted proportionately so that the weighted average of the farm yields is equal to the national average yield goal of this kind of tobacco.

Since different methods are used to determine marketing restrictions and different determinations are made with respect to marketing quotas on an acreage basis or on a poundage basis, the amount of such quotas would normally be different. However, in order to avoid influencing the outcome of the referendum with regard to an election by producers between marketing quotas on an acreage or poundage basis, the national average yield goal will be used to adjust yields with respect to marketing quotas on a poundage basis so that the amount of tobacco which could be marketed without penalty under either an acreage or poundage basis would be similar. Such calculations do not take into consideration the 3 percent which could be marketed under a poundage basis and which would otherwise be excluded from the succeeding year's quota.

Section 319(e) of the Act provides, in part, that each farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor. The national factor is obtained by dividing the national marketing quota determined under subsection 319(c) (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which tobacco marketing quotas will be determined for such succeeding marketing year: *Provided*, that such national factor shall not be less than 95 percent.

A national reserve of 20 acres has been established for dark air-cured (types 35–36) tobacco for the 1989–90 marketing year (54 FR 2606). It is proposed that a national reserve be established for the 1990–91 marketing year.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The term "normal supply" is defined in section 301(b)(11)(B) of the Act as the yearly average quantity of such tobaccos that was produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined (1989–90), adjusted for current trends in such consumption.

A normal year's exports is defined in section 301(b)(12) of the Act as the yearly average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined (1989–90), adjusted for current trend in such exports.

Section 301(b)(16)(B) of the Act defines "total supply" as the carryover at the beginning of the marketing year (October 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The total supply for dark-air cured (types 35–36) tobacco for the 1989–90 marketing year is 47 million pounds, based on 1989 marketings of 8 million pounds and carryover stocks of 39 million pounds.

Proposed Determinations

Accordingly, the Secretary proposes to make the following determinations for dark air-cured (types 35–36) tobacco for the 1990–91 marketing year:

1. With respect to dark air-cured (types 35–36) tobacco:

a. a national marketing quota on a poundage basis within the range of 7 to 10 million pounds and a national acreage allotment within the range of 3,000 to 5,000 acres;

b. a reserve supply level within the range of 35 million to 45 million pounds; and

c. a national reserve within the range of 50,000 to 100,000 pounds and 25 to 50 acres.

The Secretary of Agriculture also proposes to announce the date or period of the referendum on the type of marketing restriction for this tobacco and whether the referendum should be conducted at polling places rather than by mail ballot as prescribed in 7 CFR Part 717.

Signed at Washington, DC on February 5, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90–2967 Filed 2–5–90; 12:46 pm]

BILLING CODE 3410–05–M

Forest Service

Duncan and Sunflower Timber Sales, Tahoe National Forest, Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, Tahoe National Forest, Foresthill Ranger District is preparing an Environmental Impact Statement (EIS) for the proposed Duncan and Sunflower timber sales. The Notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the Federal Register on December 1, 1988 [53 FR 48569]. That Notice announced that the final Environmental Impact Statement (EIS) would be available by July 1989. The draft Environmental Impact Statement (DEIS) is now expected to be available in June, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and Environmental Impact Statement should be directed to Phil Tuma or Gail Parn, Foresthill Ranger District, 22830 Foresthill Road, Foresthill, CA 95631, phone (916) 367–2224.

Dated: January 25, 1990.

Richard A. Johnson,

District Ranger.

[FR Doc. 90–2926 Filed 2–7–90; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: March 5–6, 1990.

Time: 8:30 AM.

Place: State Department Building, Washington, D.C.

Type of meeting: Closed.

Contact: William C. Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC, 20451. (202)–647–5178.

Purpose of Advisory U.S Committee: To advise the President, the Secretary of State, and Director of the Arms Control

and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific national security policy and arms control issues; an Executive session will be held.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority To Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated January 30, 1990, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 90-2877 Filed 2-7-90; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held February 27, 1990, 9 a.m., in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(b)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter at (202) 377-2583.

Dated: February 5, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-2936 Filed 2-7-90; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held February 28 & March 1, 1990, 9 a.m. in the Herbert C. Hoover Building, room 1617F, 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Lee Ann Carpenter at (202) 377-2583.

Dated: January 5, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-2937 Filed 2-7-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 30, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Post Deployment Software Support will meet on 8-9 Mar 90 from 8:00 a.m. to 5:00 p.m. at HQ Air Force Logistics Command (AFLC), Wright-Patterson AFB, OH.

The purpose of this meeting will be to review Air Force post deployment software support capabilities and to make recommendations in these areas: actions that AFLC might take to improve the PDDSS process, technology that AFLC might evaluate for possible adoption, and strategy that AFLC might follow to develop and implement a mechanism for estimating cost and schedule. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

This meeting was previously scheduled for 1-2 Feb 90 in Washington, DC.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-2925 Filed 2-7-90; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Curwensville Lake Reallocation in Clearfield County, PA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is investigating the feasibility of reallocating existing flood control storage and/or conservation storage to water supply storage at Curwensville Lake. Curwensville Lake is located on the

West Branch Susquehanna River in Clearfield County, Pennsylvania. A feasibility study of the proposed action is being conducted under authority of the Water Supply Act of 1958, the Flood Control Act of 1970, and the Water Resources Development Act of 1986. The Susquehanna River Basin Commission (SRBC) is the non-Federal sponsor for the feasibility phase of the reallocation study.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ms. Claire O'Neill, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PL-B, P.O. Box 1715, Baltimore, Maryland 21203-1715, telephone (301) 962-4958.

SUPPLEMENTARY INFORMATION:

1. Curwensville Lake is located in Clearfield County on the West Branch Susquehanna River about 0.6 mile upstream of Curwensville, Pennsylvania. The dam was constructed in 1965 and is operated by the Corps of Engineers. Its primary function is flood control, however, water control management also focuses on maintaining a recreational lake and benefiting downstream water quality. Curwensville Lake project property consists of 2,648 acres of mountainous terrain including one recreation area; forested wildlife management areas; and a recreation lake of 790 surface acres.

2. The proposed action consists of reallocating the existing flood control and/or conservation storage to water supply storage. The additional water supply may be purchased by downstream municipal and industrial users to satisfy demand needs. Compliance with the Susquehanna River Basin Commission (SRBC) consumptive use regulation of 1976 (18 CFR Sect. 803.6) is expected to be the primary use for purchased water supply.

3. The Curwensville Lake Reallocation Feasibility Study will investigate a range of storage reallocation alternatives including:

(a) No action.

(b) Reallocation of the present conservation storage to water supply. No increase in pool elevation is proposed in this alternative, but water supply releases with some lake drawdowns are expected to occur during low flow periods.

(c) Reallocation of the flood control capacity and/or conservation storage to water supply. This alternative calls for an increase in pool elevations to a maximum of 6 feet, with water supply releases and some lake drawdowns expected to occur during low flow periods.

The feasibility study will evaluate the beneficial and adverse impacts of storage reallocation and water supply releases.

4. The Baltimore District is preparing a Draft Environmental Impact Statement (DEIS) which will describe the impacts of the proposed action on the environmental, cultural, and recreational resources in the study area, as well as the existing level of flood protection. The overall public interest will also be addressed. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95-217).

5. The public involvement program will include meetings and close coordination with interested private individuals and organizations, as well as concerned Federal, state, and local agencies. A public notice requesting comment on the proposed project and DEIS will be provided to appropriate agencies and the public. A scoping meeting is not planned at this time. The Baltimore District invites potentially affected Federal, state, and local agencies, and other interested organizations and parties to participate in this study. Agencies that are currently involved in the feasibility study and EIS process include, but are not limited to, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Service, U.S. Soil Conservation Service, National Park Service, Pennsylvania Department of Environmental Resources, Pennsylvania Fish Commission, Pennsylvania Game Commission, Pennsylvania Historical and Museum Commission, the Susquehanna River Basin Commission, and the Clearfield County Commission.

6. The DEIS is tentatively scheduled to be available for public review in September 1991.

Bernard E. Stalmann,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 90-2927 Filed 2-7-90; 8:45 am]

BILLING CODE 3710-41-M

DEPARTMENT OF EDUCATION

Proposed Funding Priorities for Fiscal Year (FY) 1990

ACTION: Notice of proposed funding priorities for fiscal year (FY) 1990.

SUMMARY: The Secretary of Education proposes to establish absolute priorities for the fiscal year 1990 grant competition under the Secondary Schools Basic Skills Demonstration Assistance Program. Under the priorities, funds would be reserved for mentoring and peer tutoring projects that would be coordinated with an in-depth Federal evaluation of this program.

DATES: Comments must be received on or before March 12, 1990.

ADDRESES: Comments should be addressed to Mary Jean LeTendre, Office of Elementary and Secondary Education, U.S. Department of Education, room 2043, 400 Maryland Avenue, SW., Washington, DC 20202-6132; (202) 732-4733.

SUPPLEMENTARY INFORMATION: Authority for the Secondary Schools Basic Skills Demonstration Assistance Program is contained in part B of Title VI of the Elementary and Secondary Education Act of 1965. Under this program, awards for carefully designed and monitored demonstration projects are made to local educational agencies with high concentrations of children from low-income families. These projects will test the effects of specific treatments intended to improve the achievement of educationally disadvantaged children enrolled in secondary schools. Among methods that may be used to accomplish this goal are mentoring and peer tutoring programs. A mentor relationship calls for a personal commitment by an adult to a young person who needs guidance—in this case, assistance to improve performance in basic and advanced skills. A peer tutoring program is one in which students serve as tutors to low-achieving students of approximately the same age. Some studies have shown that these two approaches show substantial promise as ways to raise the achievement levels of low-achieving students and are cost-effective. The Secretary believes that focusing projects in these two areas will provide additional information on their effectiveness and provide opportunity to compare various approaches within the broad categories to determine which approaches work best.

Proposed Absolute Priorities

The Secretary proposes to give an absolute preference to applications that focus entirely on one or both of the following programs:

(1) Mentoring programs in which adults from the community serve as mentors to educationally deprived secondary school students to assist those students to attain grade-level proficiency in basic skills and, as appropriate, learn more advanced skills. Projects must focus specifically on skill attainment by students. The mentoring

programs must provide training and supervision for the mentors.

(2) Peer tutoring programs in which secondary school students assist educationally disadvantaged peers to attain grade-level proficiency in basic skills and, as appropriate, learn more advanced skills by assisting with homework assignments, by providing instructional activities, and by fostering good study habits. The peer tutoring programs must provide training and supervision for the tutors.

Invitation to Comment

The Secretary invites public comment on the merits of the proposed priorities, including suggested modifications. Final priorities will be established on the basis of public comment and other relevant Departmental considerations, and will be announced in a notice in the **Federal Register**. This notice of proposed priorities does not solicit applications, and Department of Education staff will not review concept papers or preapplications. The publication of these proposed priorities does not bind the Federal Government to fund projects in these areas, except as otherwise directed by statute. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of applications.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in room 2026, FOB–6, 400 Maryland Avenue, SW., Washington, DC. between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 3261.

(Catalog of Federal Domestic Assistance Number 84.227, Secondary Schools Basic Skills Demonstration Assistance Program)

Dated: February 1, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–2854 Filed 2–7–90; 8:45 am]

BILLING CODE 4000–01–M

Special Study Panel on Education Indicators Meeting

AGENCY: Special Study Panel on Education Indicators.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Special Study Panel on Education Indicators. This notice also describes the functions of the Study Panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: March 1, 1990, 9 a.m. to 5:30 p.m. and March 2, 1990, 9 a.m. to 4 p.m.

ADDRESSES: Ramada Renaissance Hotel, Potomac Room, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Ralph, National Center for Education Statistics, 555 New Jersey Avenue, NW., Washington, DC 20208–5650, (202) 357–6677.

SUPPLEMENTARY INFORMATION: The Special Study Panel on Education Indicators is established under section 406(g) (3) of the General Education Provisions Act (20 U.S.C. 1221e–1). The Study Panel is established to make recommendations concerning the determination of education indicators. The Study Panel advises the Commissioner of the National Center for Education Statistics on the development of indicators on the current state of the American educational system.

The meeting of the Study Panel is open to the public. The agenda includes the following items: March 1-Review of Study Panel's progress and discussion of workplan; review of activities related to indicator development; March 2—continued discussion of Study Panel's workplan; review of State and international indicator activities.

Records are kept of all Study Panel proceedings and are available for public inspection from 9 to 5 at the office of the Study Panel at the National Center for Education Statistics, 555 New Jersey Avenue, NW., room 400, Washington, DC 20208.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–2904 Filed 2–7–90; 8:45 am]

BILLING CODE 4000–01–M

Meeting of National Commission on Drug-Free Schools

AGENCY: National Commission on Drug-Free Schools.

ACTION: Amendment to **Federal Register** Notice of Friday, October 20, 1989, Vol. 54, No. 202, p. 43107.

SUMMARY: This notice sets forth the revised date for a forthcoming regional meeting of the National Commission on Drug-Free Schools, to be held in Salt Lake City, Utah. While the location and agenda of the meeting remain the same, the date has been changed from the previously scheduled date of February 27–28, 1990. Notice of this addendum is offered pursuant to provisions of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2.

DATES/TIMES: March 5–6, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC 20202–7584; (202) 732–6140. Specific information relating to exact addresses for the meeting may be obtained two weeks prior to the established date.

Dated: February 1, 1990.

Ted Sanders,

Under Secretary.

[FR Doc. 90–2976 Filed 2–7–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities.

Date and Time. Thursday, February 22, 1990, 8:00 a.m.–5:30 p.m., Friday, February 23, 1990, 8:00 a.m.–4:00 p.m.

Place: Quality Inn Northeast, 1539 Horseshoe Drive, Columbia, South Carolina 29223, (803) 736–1600.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 586–7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda

Location: Quality Inn Northeast, 1539 Horseshoe Drive, Columbia, South Carolina 29223–6201, (803) 736–1600.

Thursday, February 22, 8:00 a.m.–5:30 p.m.

8:00–8:45 a.m. Physicians for Social Responsibility—H. Jack Geiger.

8:45–9:30 a.m. Westinghouse Electric Corporation—E. Carroll Curtis.

9:30–11:45 a.m. Invited testimony and/or work session.

11:45–1:15 p.m. Lunch.

1:15–2:15 p.m. Public comment

2:15–5:30 p.m. Invited testimony and/or work session.

Friday, February 23, 8:00 a.m.–4:00 p.m.

8:00–11:45 a.m. Invited testimony and/or work session.

11:45–1:15 p.m. Lunch.

1:15–4:00 p.m. Invited testimony and/or work session.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on February 2, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90–2979 Filed 2–7–90; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Lake Roosevelt Kokanee Salmon Facilities; Floodplain Action

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposal to construct and operate a kokanee salmon facility within a floodplain of Lake Roosevelt.

SUMMARY: BPA proposes to fund the construction and operation of two kokanee salmon facilities near Lake Roosevelt on the Sherman Creek and Galbraith Springs sites. The proposed kokanee facilities are part of the Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program, section 903(g)(1). The facilities would be designed to partially mitigate hydroelectric impacts and related fish losses resulting from the construction of Grand Coulee Dam. They would also enhance the sport fishery in Lake Roosevelt and its tributaries. The Sherman Creek facility would acclimate 1.7 million kokanee fry for release into Lake Roosevelt. Due to the nature of the proposed Sherman Creek facility, the water intake structure, fish ladder, and fill for the settling pond would be located within the floodplain (maximum allowable level of the lake). The facility proposed for the Galbraith Spring site will not be located in a floodplain and therefore will not be discussed within this notice.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621–AJ, Portland, Oregon 97208; (503) 230–5136. Maps and additional information are available from the Project Manager, Steve Levy, P.O. Box 3621, Portland, Oregon 97208; (503) 230–4153.

DOCUMENTS AVAILABLE: An Environmental Assessment (EA) on the project is being prepared. A draft of the EA was distributed for public review in December 1989. The EA includes a floodplain assessment, an evaluation of the proposed facilities, and other information on potential environmental effects. You may obtain copies of the EA (63 pages plus appendices) by calling BPA's toll-free numbers for document requests: 800–841–5867 for Oregon; or 800–624–9495 for Washington, Idaho, Montana, California, Nevada, and Utah. You will reach a recorded message where you may leave a request for the Lake Roosevelt EA.

Issued in Portland, Oregon, on January 16, 1990.

James J. Jura,

Administrator.

[FR Doc. 90–2977 Filed 2–7–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RM87–5–000 and RM87–17–000]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Natural Gas Data Collection System

Issued January 31, 1990.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of revision to FERC Form No. 592 Record Formats and FERC Form Nos. 8, 11, 14, 16 and 592 Diskette Filing Procedures.

SUMMARY: In Order No. 497–A, an order on rehearing issued December 15, 1989 (54 FR 52781 (Dec. 22, 1989)), the Commission extended the requirement to file FERC Form No. 592 until December 31, 1990, and added a new reporting requirement concerning waivers of tariff provisions. This notice modifies the instructions for an existing data item to provide the new information without changing existing character positions. The procedures for filing on diskette contained in appendix B of the record formats are revised to delete the delimited alternative. The same revision is made to the diskette filing procedures for FERC Form Nos. 8, 11, 14 and 16, required to be submitted on electronic media by Order No. 493 (53 FR 15025 (Apr. 27, 1988).

DATES: The revised formats for FERC Form No. 592 are available on January 31, 1990. Record formats are not reissued for FERC Form Nos. 8, 11, 14 and 16.

ADDRESSES: Requests for copies of the record formats for FERC Form Nos. 592 should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 2200, Washington, DC 20426, (202) 357–8118.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 6100–A, Washington, DC 20426, (202) 357–8666.

SUPPLEMENTARY INFORMATION: Order No. 497–A extended the reporting requirements for FERC Form No. 592 until December 31, 1990, and adopted a suggestion to require pipelines to maintain a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers. The information must also be included in FERC Form No. 592. In order to minimize the impact of this new requirement, staff is adding two new codes to Item No. 31, Type of Service, in the Transportation Request Record (Schedule X1, Record 02). The new codes for this item are:

code=1, firm service without waiver;
code=2, interruptible service without waiver;
code=3, firm service with waiver;
code=4, interruptible service with waiver

The details of any waiver of a tariff provision are provided in a footnote. A new Note 2, referenced by Item No. 31, is added at the end of the Transportation Request Record and reads as follows:

Note 2: Report in this data item whether (a) the request/agreement is for firm or interruptible transportation service and (b) a waiver of tariff provision has been granted in providing the requested service. Codes 1 and

2 will be used to indicate firm/interruptible transportation service without waiver of a tariff provision. Codes 3 and 4 will be used to indicate firm/interruptible transportation with a waiver of a tariff provision of the respondent. Provide details on any waiver granted in a footnote.

The codes for Item No. 6, Request Status, are moved from the "Comments" column to new Note 1. Former Notes 1 through 5 are renumbered 3 through 7. The complete Transportation Request Record, as revised herein, is appended to this notice.

Appendix B, Diskette Filing Procedures, is revised to delete the delimited option for diskette filings. These filings should be submitted using the fixed character position format. The same revision is made to appendix B in the record formats for FERC Form Nos. 8, 11, 14 and 16. The revised appendix B is also appended to this notice.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The notice will be available on CIPS for 30 days from the date of issuance of this notice.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice and the FERC Form No. 592 record formats during normal business hours in the Reference and Information Center (Room 2200) at the Commissioner's headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The record formats for FERC Form No. 592 are available: (1) On a single 5.25" (1.2MB) or 3.5" (1.44MB) double-sided, high density diskette in ASCII text file format; or (2) on paper. The diskettes and/or paper copy are available from the Commission's copy contractor, LaDorn Systems Corp., located in Room 2200, 825 North Capitol Street NE., Washington, DC 20426. The record formats are available without charge; however, the copy contractor has copy fees for both diskettes and hardcopy. Refer to "RM87–5–000, Record Formats for FERC Form No. 592" when ordering.

Lois D. Cashell,

Secretary.

Attachment A

(2) The Transportation Request Record

	Item No.	Item	Character position	Comments
	Schedule ID	1–2	character	sch=X1.
	Record ID	3–4	numeric	code=02.
	Sequence No.	5–10	numeric	right justified, zero filled, see general instruction 3.
4	Contract ID	11–18	character	see general instruction 7(b).
5	Request ID	19–25	numeric	see specific instruction 1.
6	Request status	26–27	numeric	enter the appropriate code for the status of any request for transportation service from the table in note 1.
7	Position in queue	28–32	numeric	place in waiting line for transportation service.
8	Total No. of requests in queue	33–37	numeric	total number of transportation requests pending with the pipeline.
9	Date request received	38–43	numeric	(mmddyy); see specific instruction 2.
10	Date request accepted	44–49	numeric	(mmddyy); see specific instruction 3.
11	Disposition of request	50	numeric	see general instruction 6b. code=1, granted at maximum rate; code=2, granted a discounted rate; code=3, denied due to a capacity limitation; code=4, denied due to financial condition of requestor; code=5, other (provide specific details in a footnote).
12	Requested service commencement date	51–56	numeric	(mmddyy).
13	Requested service termination date	57–62	numeric	(mmddyy)
14	Party requesting service	63–102	character	name of the party requesting service.
15	Respondent affiliation	103	numeric	See general instruction 6a; code=0, respondent not affiliated with requestor or person receiving transportation service; code=1, respondent affiliated with requestor; code=2, respondent affiliated with person receiving transportation service; code=3, respondent affiliated with both the requestor and the person receiving transportation service.
16	Percentage of ownership of respondent with requestor.	104–106	numeric	see specific instruction 4.
17	Percentage of ownership of respondent with shipper.	107–109	numeric	see specific instruction 5.

18	Party type	110	numeric	code=1, LDC/distributor;
				code=2, interstate pipeline;
				code=3, intrastate pipeline;
				code=4, end user;
				code=5, producer;
				code=6, marketer;
				code=7, other, (specify in footnote).

19	Rate schedule ID requested	111–120	character	Identification of rate schedule of respondent under which service is requested; (see specific instruction 6).
20	Discounted rate requested	121	numeric	discounted rate requested by party requesting the transportation service; code=0, discount not requestd; code=1, discount requested.
21	Maximum daily contract volume to be transported.	122–131	numeric	(MMbtu); see specific instruction 7.
22	Total contract volume to be transported	132–144	numeric	(MMbtu); see specific instruction 8.
23	Take-or-pay relief	145	numeric	code=0, respondent will not receive take-or-pay relief from shipper's supplier; code=1, respondent will receive take-or-pay relief; code=2, unknown.

	Item No.	Item	Character position	Comments
24	Take-or-pay percent	146–148	numeric	enter percent of gas transported which would receive take-or-pay relief from the shipper's supplier; format f(3,0).
25	Supplier affiliation	149	numeric	code=0, supplier not affiliated with respondent; code=1, supplier affiliated with respondent.
26	Percentage of ownership of respondent with supplier.	150–152	numeric	see specific instruction 9; format f(3,0)
27	Notification date	153–158	numeric	(mmddyy); see specific instruction 10
28	Contract execution date	159–164	numeric	(mmddyy); see specific instruction 11
29	Actual commencement date	165–170	numeric	(mmddyy); see specific instruction 12
30	Maximum distance transported	171–174	numeric	see specific instruction 13
31	Type of Service	175	numeric	see note 2; code=1, firm service without waiver; code=2, interruptible service without waiver; code=3, firm service with waiver; code=4, interruptible service with waiver.
32	Area code No. 1	176–177	character	enter code(s) for the producing area(s) where the field(s) or wells producing the gas to be transported area located; see general instruction 7(C).
	Area code No. 2	178–179	character	
	Area code No. 3	180–181	character	
	Area code No. 4	182–183	character	
	Area code No. 5	184–185	character	
	Area code No. 6	186–187	character	
	Area code No. 7	188–189	character	
	Area code No. 8	190–191	character	
	Area code No. 9	192–193	character	
	Area code No. 10	194–195	character	
31	Ultimate end user location No. 1	196–197	numeric	FIPS code for the location(s) (state) of the ultimate delivery point(s) of the gas; see general instruction 7(D).
	Ult. end user location No. 2	198–199	numeric	
	Ult. end user location No. 3	200–201	numeric	
	Ult. end user location No. 4	202–203	numeric	
	Ult. end user location No. 5	204–205	numeric	
	Ult. end user location No. 6	206–207	numeric	
	Ult. end user location No. 7	208–209	numeric	
	Ult. end user location No. 8	210–211	numeric	
	Ult. end user location No. 9	212–213	numeric	
	Ult. end user location No. 10	214–215	numeric	
	Footnote	216	numeric	code=1, footnote is provided for this record; code=0, no footnote provided.
	Filler	217–255	character	blank filled.

Note 1:

Code	Request status
1	request incomplete.
2	request complete, processing request, awaiting service, no new facilities required.
3	request complete, processing request, awaiting service, new facilities required.
4	request complete, contract signed, and awaiting commencement of service (no new facilities required).
5	request complete, contract signed, and awaiting commencement of service (new facilities required).
6	receiving service.
7	request withdrawn.
8	request denied—capacity unavailable.
9	request denied—reasons other than capacity.
10	other (provide detail in footnote).

Note 2:

Report in this data item whether (a) the request/agreement is for firm or interruptible transportation service and (b) a waiver of a tariff provision has been granted in providing the requested service. Codes 1 and 2 will be used to indicate firm/interruptible transportation service without waiver of a tariff provision. Codes 3 and 4 will be used to indicate firm/interruptible transportation service with a waiver of a tariff provision of the respondent. Provide details on any waiver granted in a footnote.

Attachment B

Exhibit B

Diskette Filing Procedures

Submission Procedures for Respondents Choosing to file on Diskette:

A diskette(s) containing the information specified for each record ID of this Form No. 592 will be filed with the FERC conforming in all respects with the following requirements:

1. The character code for representing all data should be the American National Standard Code for Information Interchange (ASCII) as defined in FIPS PUB 1–2.

2. The definitions, instructions, and schedule ID/record ID data layouts for this form specify explicitly the data items to be reported and the sequence for recording the information on the diskette(s). All information required to be filed should be recorded in one "file" or data set. The name of this file should be: "F592MMYY.ASC" where "MMYY" is the two digit month and the two digit year for the monthly submittal. If it is necessary to submit a revised report, the file name should be "F592MMYY.BSC", "F592MMYY.CSC", etc., where "BSC" indicates the first revision, "CSC" the second revision, etc. The file name should be included in the transmittal letter accompanying the respondent's filing.

3. The information required for this form should be recorded on the diskette(s) exactly as specified in the data layout for each

schedule/record and in accordance with the general instructions. However, it is not necessary to blank fill character positions following the Footnote ID through character position 255 in a diskette filing.

4. Do not omit any numeric item. See the General Instructions for this form for detailed instructions for recording numeric data on the diskette(s).

5. Record a "NA" to denote an omitted character item.

6. NUMERIC items do not require leading zeros unless specifically noted in the description of the data item.

7. Negative NUMERIC items should be recorded with a "-" preceding the first nonzero digit.

8. Each logical record should be terminated by CR (ASCII carriage return character—13 decimal, OD hexadecimal) and LF (ASCII line feed character—10 decimal, OA hexadecimal).

[FR Doc. 90-2753 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-57-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 29, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheet:

Proposed to be effective January 15, 1990
Substitute Original Sheet No. 671

Algonquin states that it is filing Substitute Original Sheet No. 671 in compliance with the Commission's Letter Order of January 12, 1990 to specifically provide that requests for amendments to existing AIT-1 Service Agreements, along with the date and time of receipt, shall be entered into Seller's open access transportation log under Algonquin's new TRACTS Service as contained in section 38 of the General Terms and Conditions, all as more fully set forth in the instant filing.

Furthermore, Algonquin states that the instant filing is without prejudice, to its rights to seek clarification and/or rehearing of certain aspects of the Commission's January 12, 1990 Letter Order, and in no way shall prejudice Algonquin's position in any subsequent proceeding.

Algonquin notes that copies of the filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2888 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that K N Energy, Inc. ("K N") on January 29, 1990 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Original Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates as set forth in the table below:

	Zone 1 (cents)	Zone 2 (cents)
CD, SF and WPS Commodity	12.63	12.63
D1 Demand	0.00	0.05
D2 Demand	(0.34)	(0.43)
WPS Demand	0.00	0.10
IOR Commodity	12.29	12.25

K N has also revised the rates of its various rate schedules to reflect changes in demand costs as set forth in K N's transmittal leter and tariff sheets. K N states that the filing reflects revision to its base tariff rates to reflect projected weight average gas costs for the quarter ending May 31, 1990. The proposed effective date for the rate changes is March 1, 1990.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with references to this filing should, on or before February 8, 1990, file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2889 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-67-001]

Natural Gas Pipeline Co. of America; Tariff Changes

February 1, 1990.

Take notice that on January 25, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the below listed tariff sheets to be effective January 19, 1990.

Substitute Second Revised Sheet Nos. 202 and 208

Natural states that the purpose of the filing is to comply with the Commission's January 19, 1990 letter order at Docket No. RP90-67-000. The order required Natural to delete paragraph B entitled, "Deregulation Rates" from the Rate Schedule FTS and ITS, Terms and Conditions sections of the respective revised Form of Service Agreements.

Natural requested waiver of the Commission's Regulations to place the tariff sheets in effect on January 19, 1990, the date of the Commission's letter order.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2890 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-76-000]

Northern Natural Gas Co.; Notice of Filing

February 1, 1990.

Take notice that on January 29, 1990, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 52c.6
Third Revised Sheet No. 52f.7

Northern proposes to modify its current penalty provision to provide for daily scheduling penalties at the delivery points at which Northern has or receives measurement information reflecting daily gas flows and which are not pipeline interconnect points. Northern proposes to charge a $1.00 per MMBtu for all scheduled but not taken volumes in excess of a four percent (4%) tolerance level.

Northern states that this modification is necessary to ensure that shippers on Northern's system do not continue to nominate volumes in excess of what it intends to take.

Northern further requests waiver of its current penalty provision from January 22, 1990 until Commission approval of this filing in compliance with Order No. 497.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2891 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Annual PGA Tariff Adjustment

February 1, 1990.

Take notice that on January 31, 1990, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheets to become effective on April 1, 1990:

Rate Schedule No. X-26
Original Volume No. 3
7th Revised Sheet No. 185.1
Rate Schedule No. G-2
First Revised Volume No. 1
54th Revised Sheet No. 4
Rate Schedule No. CD
First Revised Volume No. 1
7th Revised Sheet No. 7A

These tariff sheets reflect AER's second annual PGA filing made under the Commission's transitional rules of Order Nos. 483 and 483-A.

The proposed changes would decrease AER's system cost of gas by $1,120,662 and the cost of gas underlying AER's jurisdictional sales by $130,440 for the PGA period of April, May and June 1990 as adjusted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2896 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that on January 30, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing, as its regularly-scheduled quarterly Purchased Gas Adjustment ("PGA") with a proposed effective date of March 1, 1990, the following proposed tariff sheets to its FERC Gas Tariff:

Third Revised Sheet No. 8
Third Revised Sheet No. 9

Carnegie states that, pursuant to the PGA clause in its FERC Gas Tariff, it proposes to adjust its rates effective March 1, 1990 to relect a $.0772 per Dth decrease in the applicable commodity components of its LVWS and CDS Rate Schedules, together with a $.0176 increase in the D-1 component, and a $.0021 decrease in the D-2 components of these Rate Schedules. The proposed rate decrease for the LVIS Rate Schedule is $.0006 per Dth.

Carnegie states that copies of its filing were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be considered by the Commission in determining the appropirate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2892 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-5-24-000]

Equitrans, Inc., Proposed Change in FERC Gas Tariff

February 1, 1990.

Take notice that Equitrans, Inc. (Equitrans) on January 31, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective March 1, 1990.

Second Revised Substitute Fourteenth Revised Sheet No. 10
Second Revised Substitute Thirteenth Revised Sheet No. 14
Third Revised Sixth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with Sections 154.308 and 154.304 of the Commission's regulations and Section 19

of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The current purchased gas adjustment to Rate Schedule PLS is a decrease of $0.3641 per dekatherm (Dth). This change results in a current estimated average cost of gas of $2.3865 per Dth and a Total Commodity Charge of $2.6417 per Dth, including GRI and ACA.

The current adjustment to D(1) Purchased Gas Costs for Rate Schedule PLS reflects an increase of $0.0850 per Dth for an overall D(1) demand cost of $3.3524 per Dth.

The current adjustment to D(2) Purchased Gas Costs for Rate Schedule PLS reflects a decrease of $0.0013 per Dth for an overall D(2) demand cost of $0.0644 per Dth.

The current primary purchased gas adjustment to Rate Schedule GS–1 is a decrease of $0.0227 per Dth. This change results in a current estimated average cost of gas in this filing of $2.9713 per Dth and a Total Commodity Charge of $2.8915 per Dth, including GRI and ACA.

The current purchased gas adjustment to Rate Schedule ISS is a decrease of $0.3626 per Dth. This change results in a current estimated weighted average cost of gas in this filing of $2.3865 per Dth, a Total Maximum Rate for sales of $3.0244 per Dth, and a Total Minimum Rate for sales of $2.6343 per Dth, including GRI and ACA.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86–676–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2885 Filed 2–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–2–5–002]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

February 1, 1990.

Take notice that on January 24, 1990, Midwestern Gas Transmission Company (Midwestern) filed Second Revised Sheet No. 7, Superseding First Revised Sheet No. 7, to First Revised Volume 1 of its FERC Gas Tariff to be effective January 1, 1990.

Midwestern states that the purpose of this filing is to reflect the revised take-or-pay surcharge filed by Tennessee Gas Pipeline Company on January 16, 1990, in Docket Nos. RP88–191–016 and RP90–48–000, to be effective January 1, 1990. Midwestern further states that such filing is in compliance with the Commission's January 10, 1990 Order in Midwestern's Docket Nos. TM90–2–5–000, *et al.* Midwestern is following these charges to its customers pursuant to Article 24 of its FERC Gas Tariff.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2893 Filed 2–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–28–001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on January 31, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Seventy-Seventh Revised Sheet No. 3–A; Substitute Fifty-Fourth Revised Sheet NO. 3–B.

The proposed effective date of these revised tariff sheets is March 1, 1990.

Panhandle states that the above-referenced tariff sheets are being filed in accordance with Section 154.305(c)(4) of the Commission's Regulations to revise the projection of pipeline supplier demand costs in Panhandle's annual PGA filing of December 29, 1989 in Docket No. TA90–1–28 (December 29 Filing). Since the time of the December 29 Filing the Commission has authorized changes in the demand charges of both of Panhandle's pipeline suppliers.

Panhandle further states that these revised tariff sheets filed herewith reflect the following changes to Panhandle's D1 and D2 demand rates:

(1) An increase of $0.47 for D1 pursuant to Section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs); and

(2) A decrease of (0.29¢) for D2 pursuant to Section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle state that it should be noted that by order dated June 30, 1989, issued in Docket No. RP89–185–000, the Commission accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Pursuant to §25.31 thereof, §§18.2, 18.3, 18.5, 18.6, 18.7 and 18.8 are suspended until re-established in accordance with §25.32. Accordingly, Panhandle is reflecting as a current adjustment only the changes in its jurisdictional sales rates mentioned above.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2886 Filed 2–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–2–55–000; TM90–4–55–000]

Questar Pipeline Co.; Rate of Change

February 1, 1990.

Take notice that on January 30, 1990, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

ORIGINAL VOLUME NO. 1

Tariff sheet	Proposed effective date
First revised sheet No. 12	February 1, 1990
Second revised sheet No. 12	March 1, 1990
First revised sheet No. 39	March 1, 1990

Questar Pipeline states that the purpose of this filing is to (1) adjust the pipeline supplier charge to revised buyout and buydown costs recover charged to Questar Pipeline by its former pipeline supplier, Northwest Pipeline Corporation effective February 1, 1990; (2) adjust the purchased gas cost under its sale-for resale Rate Schedule CD–1 effective March 1, 1990; and (3) reflect the conversion of 53,580 Dth/day of sales maximum daily quantity (MDQ) to firm transportation service by Mountain Fuel Supply Company (Mountain Fuel).

Questar Pipeline states that First Revised Sheet No. 12 reflects a change to its pipeline supplier charges of $2,393 from $184,722 to $187,115. The new charge has been allocated between Questar Pipeline's CD–1 zones on the basis of MDQ.

Questar Pipeline further states that Second Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.25531/Dth which is $0.00656 lower than the currently effective rate of $2.26187/Dth. The demand base cost of purchased gas as adjusted is increased by $0.00053/Dth from $0.00548/Dth to $0.00601/Dth.

Questar Pipeline states that it has agreed with its sales customer, Mountain Fuel, to convert 53,850 Dth/day of Mountain Fuel's firm sales under Rate Schedule CD–1 of its FERC Gas Tariff, Original Volume No. 1 to firm transportation under Rate Schedule T–1 of its FERC Gas Tariff, Original Volume No. 1–A. Questar Pipeline has requested that First Revised Sheet No. 39, which reflects a revised service agreement effective date of November 1, 1989, be made effective March 1, 1990.

Questar Pipeline states that it has provided a copy of the filing to Mountain Fuel and interested state public service commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2887 Filed 2–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–2–38–000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tarriff

February 1, 1990.

Take notice that Ringwood Gathering Company (Ringwood) on January 24, 1990 tendered for filing as part of its FERC Gas Tariff, Fifty-Third Sheet Quarterly PGA–1, with the effective date of February 1, 1990.

Ringwood states that the out-of-cycle adjustment reflects an estimated $1.5668 per Mcf cost of gas, a current adjustment of $0.59; a cumulative credit adjustment of ($.4171) per Mcf; a surcharge adjustment of $.1746 and a total sales rate of $2.0544.

Ringwood is requesting that the rate increase go into effect February 1, 1990. Ringwood states that due to the negotiation of the settlement Ringwood was unable to file this out-of-cycle quarterly PGA 30 days prior to the proposed effective date. Ringwood, therefore, requests that the Commission grant a waiver of the 30 day notice requirement pursuant to 18 CFR 154.308 and the Ringwood's FERC Gas Tariff in order that the rate filing be made effective as proposed.

Ringwood also states that copies of the filing have been posted pursuant to 18 CFR 154.16 and have been mailed to Williams Natural Gas Company, Oklahoma Natural Gas Company, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2897 Filed 2–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. MG89-18-002 and MT89-8-001]

Seagull Interstate Corp.; Compliance Filing Pursuant To Order No. 497-A

February 1, 1990.

Take notice that on January 30, 1990. Seagull Interstate Corporation (Seagull) tendered the following tariff sheets for filing in the captioned dockets pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Third Revised Sheet No. 54A; First Revised Sheet No. 57A.

Any person desiring to be heard or to protest the subject filing should file a motion to inervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2894 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that Trunkline Gas Company (Trunkline) on January 31, 1990, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Seventy-Fifth Revised Sheet No. 3-A.

The proposed effective date of this revised tariff sheet is March 1, 1990.

Trunkline states that this revised tariff sheet filed herewith reflects a commodity rate increase of 4.23¢ per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with Section 154.308 (quarterly PGA filine) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Turnkline's FERC Gas Tariff, Original Volume No. 1 to reflect the change in Trunkline's jurisdictional) rates effective March 1, 1990.

Trunkline states that this filing reflects the base tariff rates filed January 30, 1990 in Docket No. RP89-160.

Trunkline states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2895 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 30, 1990 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1
17th Revised Sheet No. 14.2
FERC Gas Tariff, Original Volume No. 2
22nd Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change in rates to Rate Schedule S-3 includes a decrease in purchased gas cost of $.0786 per MMBtu.

The proposed effective date of the above filing is March 1, 1990. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by March 1, 1990.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2898 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

February 1, 1990.

Take notice that on January 30, 1990, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1990:

Fifth Revised Sheet No. 5

Midwestern states that the purpose of this revision is to institute the Annual PGA pursuant to Sections 18 and 19 of the General Terms and Conditions of Midwestern's Tariff.

Midwestern states that the Current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet No. 5 consist of $.0268 per dekatherm adjustment to the gas rate, $(.0234) per dekatherm adjustment to Rate Schedule SR-1, $(.29) per dekatherm applicable to the D1 component of the demand rates and a $.0004 per dekatherm adjustment to the D2 component.

Midwestern states that the revisions also reflect a $(.0095) per dekatherm surcharge adjustment to the gas rates and $(.25) per dekatherm surcharge adjustment to the demand D1 rate and $(.0061) per dekatherm surcharge to the demand D2 rate for amortizing the Unrecovered Gas Cost Account.

Midwestern states that copies of the filing have been mailed to all its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Energy Reguatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before February 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2881 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1281-003]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

February 1, 1990.

Take notice that on January 26, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing tariff sheets to be part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on various dates.

Natural states that these sheets were submitted in compliance with the Federal Energy Regulatory Commission Order issued January 24, 1990 at Docket No. CP89-1281-001, which approved with certain modifications an interim settlement and allowed Natural to implement an Interim Gas Inventory Charge (IGIC). Natural further states that the above referenced tariff sheets reflect the necessary revisions to Natural's tariff to implement the modifications required by the Commission's order; namely:

(1) Severance of the Rate Schedule G-1 sales customers from the settlement.

(2) Revision of Rate Schedules S-1, LS-2 and LS-3 to allow customers subject to the IGIC to inject 100% third party gas in contract storage.

(3) Modification of the reconciliation provision, to preclude the use of IGIC revenue to offset PGA undercollection in excess of three percent (3%) of its purchase gas costs as defined in § 154.306 of the Commission's Regulations.

(4) Insertion of a revised sunset date, to coincide with implementation of the IGIC, under Natural's Order No. 500 program for recovery of take-or-pay costs.

(5) Rejection of the requested waiver of the refund provisions of § 154.305(i) of the Commission's Regulations.

Natural respectfully requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective on their indicated effective dates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions of protests must be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2882 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 1, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 29, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective November 1, 1989
Second Substitute Seventeenth Revised Sheet No. 50
Proposed to be Effective November 15, 1989
Second Substitute Eighteenth Revised Sheet No. 50
Proposed to be Effective December 1, 1989
1st Revised Eighteenth Revised Sheet No. 50
Proposed to be Effective January 1, 1990
Substitute Nineteenth Revised Sheet No. 50
Proposed to be Effective February 1, 1990
Substitute Twentieth Revised Sheet No. 50

Texas Eastern states that these sheets are being filed pursuant to section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 which provide for an automatic rate adjustment to flow through any changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underlie Texas Eastern's Rate Schedules SS-2 and SS-3.

Texas Eastern states that on October 30, 1989 CNG filed in Docket Nos. RP90-27-000, RP88-211-000, and RP89-256-000 tariff sheets revising Rate Schedule GSS rates to be effective November 1, 1989. The October 30, 1989 filing was made to revise base tariff rates to include the cost of converting a portion of CNG's firm sales agreement with Texas Eastern to firm transportation. The Commission issued an order on November 29, 1989 in Docket Nos. RP90-27-000, RP88-211-000, and RP89-256-000 approving revised Rate Schedule GSS rates to be effective November 1, 1989.

Texas Eastern states that on October 31, 1989 CNG filed in Docket No. TQ90-1-22-000 its regular PGA rate filing to become effective December 1, 1989. CNG's filing incorporated revised Rate Schedule GSS rates filed on October 30, 1989 in Docket No. RP85-169-045 that were rejected by the Commission in an order dated November 22, 1989. On November 27, 1989 the Commission issued an order approving CNG's October 31, 1989 PGA filing.

Texas Eastern states that on December 8, 1989 CNG filed to increase the Rate Schedule GSS rates effective January 1, 1990 as a part of its settlement approved by Commission order issued October 6, 1989 in Docket Nos. RP88-217-000, RP88-217-001, RP89-124-000, rand RP89-165-000. CNG proposed to increase the take-or-pay commodity surchage from $0.0031 to $0.0091. CNG's filing incorporated revised Rate Schedule GSS rates filed on December 5, 1989 in purported compliance with Commission orders dated May 2, 1989 and October 10, 1989 in Docket No. RP85-169. CNG's December 5, 1989 filing was rejected by the Commission in an order dated January 12, 1990 in Docket No. RP85-169-047. On January 5, 1990 the Commission issued an order in Docket No. RP90-56-000 approving CNG's December 8, 1989 filing to be effective January 1, 1990.

Texas Eastern states that pursuant to Rate Schedules SS-2 and SS-3 of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, any change in CNG's GSS rates are flowed through to Texas Eastern's SS-2 and SS-3 rates. CNG's October 30, October 31, and December 8, 1989 filings result in revisions in the demand, space, injection and withdrawal rates of CNG's GSS rates.

Texas Eastern states that section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 states that changes in Texas Eastern's rates which reflect changes in CNG's Rate Schedule GSS rates shall become effective without suspension coinciding with the effective date of the change in CNG's GSS rates.

The proposed effective dates of the above tariff sheets are as stated above.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2883 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-82-001]

Viking Gas Transmission Co.; Rate Filing

February 1, 1990.

Take notice that on January 19, 1990, Viking Gas Transmission Company (Viking) filed its Substitute Third Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective December 7, 1989. The purpose of this filing is to comply with the Commission's order of January 5, 1990, which directed Viking to refile its rates classifying its Canadian demand costs between its demand and commodity rates using the MFV methodology.

Further, take notice that, in the alternative, Viking also filed its Alternate Substitute Third Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, which Viking proposes to be effective December 1, 1989. Other than the proposed effective date, this alternative tariff sheet also complies with the Commission's order of January 5, 1990. Viking states that it respectfully requests that the Commission grant any waivers it deems necessary for acceptance of the Alternate Substitute Third Revised Sheet No. 6, rather than Substitute Third Revised Sheet No. 6.

The current Purchased Gas Cost Rate Adjustments reflected on both revised tariff sheets consist of a $0.1783 per dekatherm adjustment applicable to the gas component of Viking's sales rates, and a $7.15 per dekatherm adjustment applicable to the Demand D-1 component.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before February 8, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2884 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01

[Docket No. ER90-47-000]

Yankee Atomic Electric Co.; Initiation of Proceeding and Refund Effective Date

February 2, 1990.

Take notice that on December 29, 1989, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

REFUND EFFECTIVE DATE: April 9, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2880 Filed 2-7-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-86-NG]

Falcon Seaboard Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on Deember 1, 1989, of an application filed by Falcon Seaboard Gas Company (FSGC), for authorization to import up to 16 MMcf per day or up to 5.84 Bcf of Canadian natural gas annually over a period of 15 years beginning on the date of first delivery. First delivery of gas is expected to occur on or about September 1991, but no later than November 1, 1993. The imported gas would be used to fuel a proposed 79-MW cogeneration plant to be located near North East, Pennsylvania. The imported gas would be transported from the U.S./Canadian border near Niagara Falls, Ontario, to North East, Pennsylvania, via existing facilities of National Fuel Supply Corporation (Natural) and a new loop to be added to Tennessee Gas Pipeline Company's (Tennessee) existing spur line connecting to the facilities of TransCanada PipeLines Limited. FSGC seeks authority to import the gas from FSC Resources Limited (FSC) who, in turn, would purchase the gas from Western Gas Marketing Limited (WGML), or from substitute suppliers if the gas is available at prices more competitive than WGML's.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., March 12, 1990.

ADDRESSES: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, GC-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The applicant, FSGC, is an affiliate of FSC and of Northern Consolidated Power, Inc. (NorCon). NorCon would own and

operate the proposed cogeneration facility to be served by FSGC. The proposed cogeneration facility would be a "qualifying facility" under section 201 of the Public Utilities Regulatory Policies Act of 12978 (PURPA).

Transportation of the imported gas from the U.S./Canadian border to East Aurora, New York would be via a loop to be added to Tennessee's existing spur line connecting to the facilities of TransCanada. The proposed loop would be constructed by National, Tennessee, CNG Transmission Corporation and Texas Eastern Transmission Corporation. Transportation of the gas from East Aurora, New York, to North East, Pennsylvania where the proposed cogeneration plant would be located would be via the existing facilities of National. Some local gas lines would be installed to move the gas from National's facilities to the proposed cogeneration plant.

Under the terms of the gas purchase agreement between FSGC and FSC dated November 28, 1989, FSGC would pay a price for the imported gas consisting of a monthly demand charge and a monthly commodity charge. The demand charge would consist of the sum of a negotiated fixed amount based on volumes purchased, the average monthly demand charge which WGML must pay the NOVA Corporation of Alberta for transportation of the gas and the monthly amounts paid by FSC to TransCanada for transportation of the gas. The commodity charge would be a function of the weighted average netback price of gas sales by WGML to local utilities in Eastern Canada for high priority customers plus five cents (Canadian) less the daily demand charge paid to NOVA and less the daily amounts payable to TransCanada for transportation of the gas. Under this pricing formula, FSGC estimates that the border price of the gas for November 1989, if deliveries had taken place then, would have been $2.58 per MMBtu. The estimated demand charge for November 1989, of 89 cents was calculated as follows: The average demand charge paid to NOVA of 12 cents per MMBTu plus a negotiated demand charge of 21 cents per MMBtu and plus TransCanada's demand figure for transportation of the gas of 56 cents. The estimated commodity charge for November 1989, consisting of the sum of the commodity and fuel charges FSC would pay WGML and TransCanada, would have been $1.69 per MMBtu.

The FSGC/FSC contract gives FSGC the right to direct FSC to reduce maximum contract quantities in FSC's gas purchase agreement with WGML and to substitute gas reserves or other gas supplies should they be more competitively priced. The FSGC/FSC contract does not impose any take-or-pay obligation on FSGC.

In support of its application, FSGC asserts that the imported gas would be competitively priced because FSGC and its affiliates would be seller, purchaser and end-user of the gas and would have a strong incentive to avoid the economic losses that might result from uncompetitive prices. Further, FSGC asserts that since the commodity charge it would have to pay for the gas is a function of the average net back price for gas sales by WGML to utilities in Eastern Canada for high priority customers, the price of the gas should remain at reasonable levels. Should more competitively priced gas be available elsewhere, FSGC points out that it has the flexibility under the gas purchase contract with FSC to direct FSC to purchase such gas in lieu of gas from WGML. To ensure that adequate supplies of gas are available to meet the need of the proposed cogeneration facility when it begins operation, FSGC notes that the exporter, FSC, would purchase the gas from WGML under a contract requiring WGML to maintain adequate supply sources and permitting FSC to purchase its own gas reserves or substitute gas supplies if WGML's gas supply pool falls below the levels prescribed in the FSG/WGML contract.

The decisions on FSGC's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because the volumes are needed for a proposed new cogeneration plant, the price of the gas is competitive, and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC is currently performing an environmental review of the impacts of constructing and operating the proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation of this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why and oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues

genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of FSGC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 31, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-2978 Filed 2-7-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3721-8]

Superfund Response Action Contractor Indemnification

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: On October 31, 1989, the Environmental Protection Agency (EPA) issued a proposed guidance document to implement section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9619). Today, the Agency is announcing a public meeting, the purpose of which is to receive oral comments from the public. Also, the Agency is extending the current deadline of February 2, 1990, for submission of written comments. The Agency will now accept written comments no later than seven days following the date of the public meeting. This is the second time that the deadline has been extended.

DATES: The public meeting will be held on February 20, 1990, from 8:30 a.m. to no later than 11:30 a.m. Written comments will be accepted no later than February 27, 1990.

ADDRESSES: The meeting will be held in the EPA Education Center Auditorium, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Gillis, (202)475-6771.

Mary A. Cade,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-2971 Filed 2-7-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3722-1]

Relative Risk Reduction Strategies Committee; Two Risk Reduction Subcommittee Open Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Risk Reduction Subcommittee of the Relative Risk Reduction Strategies Committee (RRRSC). The Subcommittee will meet on Friday, March 2, 1990 and Monday, April 2, 1990. The meeting March 2nd will be at the Hyatt Hotel, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202 between 8:30 a.m. and 3 p.m. The April 2nd meeting will be at the Howard Johnson's National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202 between 8:30 a.m. and 3 p.m.

PURPOSE: The purpose of this meeting is to discuss environmental risk reduction strategies based, in part, on an evaluation of EPA's 1987 report "Unfinished Business", to develop a methodology for developing new strategies, and to follow up on previous meetings. For further information concerning this project, please refer to the notices contained in 54 FR 35386, August 25, 1989, and 54 FR 38282, September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning the Subcommittee or the meeting should contact Dr. Richard Cothern, Designated Federal Official, U.S. Environmental Protection Agency (A-101F), 401 M Street SW., Washington, DC 20460, (202) 382-2552 or (FTS) 382-2552, FAX (202) 475-9693. Seating at the meeting is on a first come basis.

Dated: February 1, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-2968 Filed 2-7-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3721-9]

Open Meetings of the Negotiated Rulemaking Advisory Committee for Volatile Organic Chemical Equipment Leaks

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of open meetings of the Advisory Committee to negotiate a rule to control fugitive emissions of toxic volatile organic compounds (VOCs) from chemical equipment leaks.

The next meeting will be held on February 22, 1990 from 10:00 a.m. to 5:00 p.m., and on February 23, 1990 from 9:00 a.m. to 4:00 p.m., at Bristol Hotel, 2430 Pennsylvania Ave. NW., Washington, DC, (202) 955-6400. The purpose of the meeting is to continue to address substantive issues such as: leak definition, conceptual approach and scope of the standard, emission factors and approaches to assessing the cost of the standard.

The Agency intends to expand the scope of this and other rules that are planned for adoption within the first two years after passage of CAA revisions. The scope will go beyond the 13 source categories originally discussed in the negotiation, and is now planned to include all categories of SOCMI sources that produce, and possibly all that use (as raw materials or intermediates) chemicals in the CAA list (e.g., the current list of 191). Although organic chemical processes (e.g., benzene/toluene/xylene units) located in refineries or on refinery property would be affected, the Agency does not plan at this time, to include petroleum refinery processes among the source categories affected by this initial phase of rules.

The March meeting is scheduled for March 27 and 28, 1990 at the Pickett Suite Hotel (Guest Quarters), Research Triangle Park, NC. The April meeting is scheduled for April 25-26 at the Conservation Foundation, 1250 Twenty-fourth St. NW., Washington, DC.

Persons needing further information on substantive aspects of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, U.S. EPA, (919) 541-5579. Persons needing further information on committee arrangements or procedures should contact Deborah Dalton, Regulatory Negotiation Project, U.S. EPA, (202) 382-5495 or the Committee's facilitator, Philip Harter, (202) 887-1033.

Dated: February 2, 1990.

Paul Lapsley,

Director, Information and Regulatory Systems Division, Office of Policy, Planning and Evaluation.

[FR Doc. 90-2970 Filed 2-7-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180824 FRL 3710-1]

Receipt of Application for Emergency Exemption; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Tennessee Department of Agriculture (hereafter referred to as "Applicant") to use the postemergent herbicide Accent, 2-[[[[(4,6-Dimethoxy-2-pyrimidinyl)amino carbonylaminosulfonyl-N,N-dimethyl-3-pyridine carboxamide. If the Agency could not support the use of Accent under the section 18 program, the Applicant requests the Agency to determine whether the use of Beacon, 3-[4,6-Bis(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonyl-phenylsulfonyl) urea, could then be supported for use as an emergency exemption. The purpose of the request is to treat 300,000 acres of field corn to control Johnsongrass. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant this exemption.

DATES: Comments should be received on or before February 23, 1990.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180824" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Forrest, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Accent, 2-[[[[(4,6-Dimethoxy-2-pyrimidinyl)amino carbonylaminosulfonyl-N,N-dimethyl-3-pyridine-carboxamide, or beacon, 3-[4,6-Bix-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxy carbonyl-phenylsulfonyl) urea.

Information in accordance with 40 CFR part 166 was submitted as part of this request. Accent and Beacon are not currently registered in the United States. Both chemicals are structurally similar.

The Applicant states that although preemergent herbicides provide early season weed control, they do not provide season-long weed control. Thiocarbamate herbicides are commonly used on corn for Johnsongrass control. However, the Applicant states that continued use of these herbicides will result in a build up of micro-organisms in the soil that break down these herbicides. Furthermore, cultivation is no longer an acceptable means of control due to soil loss through erosion.

The Applicant states that Johnsongrass is one of the toughest weeds to control in any field crop. It is particularly tough to control in corn because under normal conditions corn grows taller than Johnsongrass, meaning that over-the-top applications of herbicides are impractical. Johnsongrass not only acts as a competitor for moisture and soil nutrients but as host for a number of pathogens, one being maize dwarf mosaic virus complex. Most fields are affected with this disease which can cause an annual average loss of 12 bushels per acre.

If the Agency cannot support the use of Accent under the section 18 program, the Applicant requests the Agency to determine whether the use of Beacon can then be supported for use as an emergency exemption. The Applicant proposes to make a maximum of two applications of the product Accent or Beacon to approximately 300,000 acres. The maximum application rate requested is 1 lb. of the product Accent per acre per crop, or 0.76 oz of the product Beacon per acre per crop.

According to the Applicant, an emergency situation exists because there are presently no registered postemergent herbicides available that will control the infestation of Johnsongrass in an efficacious and cost effective manner.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: January 19, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-2969 Filed 2-7-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-851-DR]

Amendment to Notice of a Major Disaster Declaration; Florida

January 31, 1990.

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-851-DR), dated January 15, 1990, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of Florida, dated January 15, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1990:

The counties of Charlotte, DeSoto, Glades, Hardee, Highlands, Indian River, Manatee, Martin, Okeechobee, St. Lucie, and Sarasota for Disaster Unemployment Assistance only.

Richard W. Krimm,

Acting Deputy Associate Director State and Local Programs and Support Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 90–2954 Filed 2–7–90; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200322

Title: City of Los Angeles/Auto Warehousing L.A., Inc. Terminal Agreement.

Parties: City of Los Angeles (City) Auto Warehousing L.A., Inc. (Tenant).

Synopsis: The Agreement establishes Permit 656, wherein the City grants Tenant use of certain premises at the Port of Los Angeles (Port) for receiving, warehousing, servicing, storing, repairing, handling and distributing motor vehicles exported or imported through the Port and for purposes incidental thereto. The Agreement will expire August 31, 1992.

Agreement No.: 224–010642–006

Title: Port of Oakland/Stevedoring Services of America Terminal Agreement.

Parties: Port of Oakland (Port) Stevedoring Services of America (SSA).

Synopsis: The Agreement amends the basic agreement (Agreement No. 224–010642). It extends the agreement's term to March 31, 1990. As consideration for SSA's services in the Port's Charles P. Howard Terminal Area, the Port will continue to pay SSA 10 percent of the gross wharfage and dockage terminal tariff revenues through March 31, 1990, without application of any breakpoint levels or additional compensation for tonnage exceeding breakpoint levels during this extended period.

By Order of the Federal Maritime Commission.

Dated: February 2, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–2855 Filed 2–7–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Prevention of Secondary Disabilities in People with Spinal Injury: Colloquium

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC), in conjunction with the National Council on Disability, the American Spinal Injury Association, the National Institute on Disability and Rehabilitation Research, the Association of State and Territorial Health Officers, and the National Academy of Sciences Institute of Medicine, will convene a public meeting of spinal cord injury health professionals, consumers, state public health officials, federal agency representatives, and other interested parties.

NAME: Prevention of Secondary Disabilities in People with Spinal Injury.

TIME AND DATES:

8:30 a.m.–4:30 p.m, February 27, 1990
8 a.m.–4:30 p.m., February 28, 1990.

PLACE: Atlanta Hilton and Towers, 255 Courtland Street, NE., Atlanta, Georgia 30043.

STATUS: Open to the public—limited only by space available.

PURPOSE: The purpose of this meeting is to identify significant elements of a public health strategy to effectively prevent secondary disabilities in people with spinal cord injuries.

FOR FURTHER INFORMATION CONTACT: Mark Long, Public Health Advisor, Division of Injury Epidemiology and Control, CEHIC, CDC, 1600 Clifton Road, NE., F36, Atlanta, Georgia 30333, Telephones: FTS: 236–4662, Commercial: 404/488–4662.

Dated: February 2, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–2974 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–18–M

National Institute for Occupational Safety and Health (NIOSH) Board of Scientific Counselors Surveillance Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

NAME: NIOSH Board of Scientific Counselors Surveillance Subcommittee.

TIME AND DATE:

9 a.m.–5 p.m., February 27, 1990
9 a.m.–12 noon, February 28, 1990

PLACE: Alice Hamilton Laboratory, NIOSH, CDC, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

STATUS: Open to the public, limited only by the space available.

PURPOSE: The subcommittee agenda will include a review of a proposed case definition for acute pesticide poisoning, and a protocol to evaluate the utility of occupational mortality surveillance using industry and occupation reported on death certificates.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed below as soon as posible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and the brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chair and as time permits. Anyone wishing to have a question answered during the meeting should submit the question in writing, along with his or her name and affiliation, through the contact person to the Chair. At the discretion of the Chair and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed below.

CONTACT PERSON: Thomas D. Matte, M.D., Medical Epidemiologist, NIOSH, CDC (D26), Atlanta, Georgia 30333, Telephone: Commercial: (404) 639–1530, FTS: 236–1530.

Dated: February 2, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–2975 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 90F–0019]

Denki Kagaku Kogyo Kabushiki Kaisha; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Denki Kagaku Kogyo Kabushiki Kaisha has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vinyl chloride-vinyl acetate-2-methacryloyloxyethyl phosphate copolymer as a component of adhesives and polymeric coatings intended to contact food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4084) has been filed by Denki Kagaku Kogyo Kabushiki Kaisha, c/o The Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 22091, proposing that § 175.105 *Adhesives* (21 CFR 175.105) and § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of vinyl chloride-vinyl acetate-2-methacryloyloxyethyl phosphate copolymer as a component of adhesives and polymeric coatings intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 29, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–2943 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90F–0020]

Velsicol Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Velsicol Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of isodecyl benzoate as a component of adhesives for articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetice Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4187) has been filed by Velsicol Chemcial Corp., 5600 North River Rd., Rosemont, IL 60018–5119, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of isodecyl benzoate as a component of adhesives for articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 29, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–2944 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90F–0021]

Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-*tert*-butyl-6-(3-*tert*-butyl-2-hydroxy-5-methylbenzyl)-4-methylphenylacrylate as an antioxidant in styrene block polymers intended to contact food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4190) has been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-*tert*-butyl-6-(3-*tert*-butyl-2-hydroxy-5-methylbenzyl)-4-methylphenylacrylate as an antioxidant in styrene block polymers complying with § 177.1810 (21 CFR 177.1810) intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regualtion in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 29, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–2846 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89G–0526]

Psyllium Seed Husk Gum; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kellogg Co. has filed a petition (GRASP 0G0357), proposing to affirm that psyllium seed husk gum is generally recognized as safe (GRAS) for use in grain-based foods.

DATES: Comments by April 9, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Sections 201(s), 409 (21 U.S.C. 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Kellogg Co., One Kellogg Sq., Battle Creek, MI 49016, has filed a petition (GRASP 0G0357), proposing that psyllium seed husk gum be affirmed as GRAS for use in grain-based foods.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before April 9, 1990, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday thorugh Friday.

Dated: January 29, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–2845 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Review Criteria, Funding Priority and Special Consideration for Special Project Grants to Schools of Public Health

The Health Resources and Services Administration (HRSA) announces the final review criteria, funding priority and special consideration for Special Project Grants to Schools of Public Health.

Section 790A of the Public Health Service Act, as amended, authorizes the Secretary to award grants to schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects:

(1) For preventive medicine;

(2) For health promotion and disease prevention;

(3) For increasing the enrollment in such schools of public health of individuals from disadvantaged backgrounds; and

(4) To improve access and quality in health care.

Proposed review criteria, a funding priority and special consideration were published in the **Federal Register** of December 7, 1989, for public comment. No comments were received during the 30-day comment period.

As proposed, the following review criteria, funding priority and special consideration will be retained as follows:

Final Review Criteria

The HRSA will review applications taking into consideration the following factors:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in: The Institute of Medicine study titled The Future of Public Health; Objectives for the Nation; and the Sixth Report to the President and Congress on the Status of Health Professions in the United States;
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Where there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Final Funding Priority for FY 1990

For Fiscal Year 1990, funding priority will be given to projects that both involve trainees and have a greater percentage of underrepresented minority trainees involvement in their activities than the percentage of full time equivalent underrepresented minority trainees enrolled in the school of public health during the previous academic year.

Final Special Consideration for FY 1990

Special consideration will be given to applications which address the following areas of emphasis and issues:

(1) Substance abuse;

(2) HIV/AIDS;

(3) Geriatrics;

(4) Environmental health; and

(5) Training students to work in public health agencies.

The Catalog of Federal Domestic Assistance number for this program is 13.188. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: February 2, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–2951 Filed 2–7–90; 8:45 am]

BILLING CODE 4160–15–M

Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $8.8 million will be available in Fiscal Year (FY) 1990 for: (1) Awards for health professions educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (Section 338B of the Public Health Service Act); (2) grants to States to support the establishment of State programs similar to the NHSC Loan Repayment Program (Section 338H of

the Public Health Service Act); and (3) awards under the NHSC Scholarship Program (Section 338A of the Public Health Service Act). Although there are separate FY 1990 appropriations for the NHSC Scholarship and Loan Repayment Programs, the House and Senate Appropriations Committee Reports (House Report 101–172; Senate Report 101–127) indicate the intent of both Committees to provide the Department with the flexibility to shift funds between the loan repayment and scholarship programs.

It is anticipated that up to $3 million of the funds appropriated for the Loan Repayment Programs (NHSC and State) and the NHSC Scholarship Program will be for nurses, including nurse midwives and nurse pediatric practitioners.

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC Loan Repayment Program and invites States to apply for grants to operate State Loan Repayment Programs. The HRSA estimates that approximately 125 Loan Repayment awards may be made to physicians and nurses under the NHSC Loan Repayment Program, and up to 10 grants may be awarded to States for State Loan Repayment Programs.

Part A of this notice contains specific information concerning the NHSC Loan Repayment Program, and Part B contains specific information concerning grants for State Loan Repayment Programs.

Part A—NHSC Loan Repayment Program

DATES: To receive early consideration for funding, health professionals must submit their applications by February 15, 1990, and have approved site matches agreed upon by that date. Since the Department has the flexibility to shift funds between the NHSC Loan Repayment Program and the NHSC Scholarship Program based on program needs and demands, additional funds may become available at a later date. Therefore, health professionals who either submit applications or match to sites after February 15, 1990, but who submit applications before September 1, 1990, may still be considered for funding. Those so affected will be notified directly should such funds be shifted.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline and received in time for submission to the reviewing program official. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications received after the announced closing date will not be considered for funding.

ADDRESS: Application material may be obtained by calling or writing, and completed applications should be returned to, Dr. Norris Lewis, Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, Room 7–34, 5600 Fishers Lane, Rockville, MD 20857 (301–443–6354). The application has been approved under Office of Management and Budget (OMB) Number 0915–0127.

FOR FURTHER INFORMATION CONTACT: Dr. Norris Lewis, Director, Division of Health Services Scholarships, at the above address and phone number.

SUPPLEMENTARY INFORMATION: Section 338B of the Public Health Service Act (42 U.S.C. 2541–1) authorizes the Secretary to establish the National Health Service Corps (NHSC) Loan Repayment Program, to help in assuring an adequate supply of trained health professionals for the NHSC. The NHSC is used by the Secretary to improve the delivery of health services to designated Health Manpower Shortage Areas (HMSA).

Under the NHSC Loan Repayment Program, the Secretary will repay educational loans incurred by health professionals to pay for their health professions education. If an individual who is selected to participate in this program agrees to serve for either 3 or 4 years in a designated HMSA, the Secretary will pay up to $20,000 per year for each year of obligated service. If the service is performed in an HMSA serving Indian populations, up to $25,000 may be repaid for each year. If a participant agrees to serve the minimum service obligation (2 years) in a designated HMSA, the Secretary will repay up to a maximum of $13,333 per year of the health professions educational loans of such individual for each year of agreed service (up to $16,667 per year for service to Indian populations in specified sites). The loan repayment for a 2-year commitment is provided at a lower annual level as an incentive for program particpants to make service commitments of 3 or 4 years.

In addition to these amounts, loan repayment recipients will be employed and paid by the Federal government or the private entity to which they have been assigned. The Secretary will identify annually those HMSAs which will be available for service repayment under NHSC Loan Repayment Program. These areas for service under the NHSC Loan Repayment Program will be selected based on the needs of the areas and priorities determined by the Secretary.

The Secretary may, upon written request, make tax liability payments not to exceed 20 percent of the annual amounts of the loans being repaid to reimburse the Program participants for increased tax liability resulting from loan repayments received under this Program.

The Secretary will select applicants for consideration for participation in the NHSC Loan Repayment Program according to the following selection criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined at the end of part A of this notice.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in an HMSA.

(3) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board), have a current and unrestricted valid license to practice their profession in a State, and are immediately available to serve, all receive highest consideration.

(4) Greater consideration will be given to persons who agree to serve for longer periods of time.

(5) The academic standing, prior professional experience in a primary care HMSA, board certification, residency achievements, peer recommendations, depth of past residency practice experience, and other criteria related to professional competence or conduct will also be considered.

Among applicants, priority will be given to those applicants whose health profession and specialty are most needed by the NHSC and who are, in the Secretary's judgement, most committed to practice in an HMSA.

Health professionals from minority groups are particularly encouraged to apply under this program.

Eligible Applicants

To be eligible to participate in the NHSC Loan Repayment Program, an individual must: (a)(1) be enrolled as a full-time student at an accredited school in a State, in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, nursing, nurse midwifery, dentistry, or other health profession or (2) be enrolled in an approved graduate training program in allopathic or osteopathic medicine, nursing, nurse midwifery, dentistry, or other health profession or (3) have a degree and have completed an approved graduate training program in allopathic or osteopathic medicine, nursing, nurse midwifery, dentistry, or other health profession, and have a current and valid license to practice such health profession in a State; (b) be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; (c) submit an applicant to participate in the NHSC Loan Repayment Program; and (d) sign and submit to the Secretary, at the time of the submission of such application, a written contract agreeing to accept repayment of educational loans and serve for the applicable period of obligated service in a HMSA as determined by the Secretary.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC Loan Repayment Program unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the NHSC Loan Repayment Program. No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC Loan Repayment Program contract or while the provider is in professional school or an approved graduate training program.

Professions and Specialties Needed by the NHSC

At this time, the Secretary has determined that priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine and pediatrics. Among nurses, priority will be given to nurse midwives and nurse practitioners.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals.

The OMB Catalog of Federal Domestic Assistance number for this program is 13.162.

Part B—Grants for State Loan Repayment Programs

DATES: Completed applications, to receive consideration, must be delivered by 5:00 p.m. on May 15, 1990, to the address below or postmarked by May 15, 1990, and delivered in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not submitted on time will be returned.

ADDRESSES: Application materials may be obtained by calling or writing, and completed applications should be returned to: Grants Management Branch, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 12100 Parklawn Dr., Rockville, Maryland 20857, (301) 443–5902. Application for these grants will be made on Form PHS–5161 with revised facesheet DHHS Form 424, as approved by the OMB under control number 0348–0006.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Van Aden, National Health Service Corps, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, Room 7A–39, Rockville, MD 20857, (301) 443–1470.

SUPPLEMENTARY INFORMATION: Section 338H of the Public Health Service Act (42 U.S.C. 254q–1) authorizes the Secretary to establish a program of grants for State Loan Repayment Programs to help in assuring an adequate supply of trained health professionals for medically underserved areas.

Through grants under this program, the Secretary may support up to a maximum of 75 percent of the costs of repayment of health profession educational loans under an approved State Loan Repayment Program.

The State's share of the program must be used to repay qualifying loans of health professionals and/or the administrative costs of the State's Loan Repayment Program and may not consist of any Federal funds. No portion of the Federal share shall be used to pay for administrative or management costs of any State Loan Repayment Program. All program administrative costs are to be borne by the State.

Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

The following criteria will be used to evaluate the applications and award the State Loan Repayment Program grants: (a) the need of the State for health professions manpower consistent with the health professions and specialities identified in this Notice; (b) the number and type of providers the State proposes to support through this program; (c) the acceptability of the State's standards for the designation of medically underserved areas and the appropriateness of the proposed placements of obligated providers; (d) the degree of similarity of the proposed State program to the National Health Service Corps Loan Repayment Program; (e) the adequacy of the qualifications and administrative and managerial ability and experience of the State staff to administer and carry out the proposed project; (f) the suitability of the applicant's approach and the degree to which the applicant's plan is coordinated with Federal, State and other programs for meeting the State's health professions manpower needs and resources, including mechanisms for evaluation of the program's activities; (g) the source and plans for use of the State match (including the percentage of the State's match that is proposed to be used for loan repayments), the degree to which the State match exceeds 25% or has increased over time, and the amount of the match relative to the needs and resources of the State; and (h) the extent to which special consideration will be extended to medically underserved areas with large minority populations. In the case of applications for continued funding, past performance and the use of previously awarded State Loan Repayment Program grant funds will be reviewed. No loan repayments may be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract and no credit will be given for any practice done while the provider is in a professional school or graduate training program.

Professions and Specialties Needed by Medically Underserved Areas

To be supported under this program the State Loan Repayment program must establish State priorities for the

selection of health professionals consistent with the NHCS Loan Repayment Program. At this time, the Secretary has determined that under the NHSC LRP priority will be given to physicians who are certified or eligible to sit for the certifying examination of the following specialty boards: Family practice, osteopathic general practice, obstetrics/gynecology, internal medicine and pediatrics. Among nurses, priority will be given to nurse midwives and nurse practitioners.

Other Award Information

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR part 100. Executive Order 12372 allows States and territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages will contain a listing of States which have chosen to set up a review system and will provide point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Grants Management Office.

The OMB Catalog of Federal Domestic Assistance number for this program is 13.165.

Dated: December 28, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 90-2952 Filed 2-7-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on February 28-March 1-2, 1990, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on February 28, from 8:30 a.m. to 9 a.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on February 28 from approximately 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John W. Abrell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, room 810, National Institutes of Health, Bethesda, Maryland 20892 (301/496-9767) will furnish substantive program information.

Dated: February 2, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-2982 Filed 2-7-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Public Law 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1990.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North Building, room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. A.T. Gregoire, room 520, Executive Plaza North Building, Telephone: 301, 496-1696.

Date of Meeting: March 1-2, 1990.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

Open:
March 1, 1990, 8:30 a.m.-10:30 a.m.

Closed:
March 1, 1990, 10:30 a.m.-5:00 p.m.
March 2, 1990, 8:30 a.m.-adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, room 520, Executive Plaza North Building, Telephone: 301, 496-1696.

Date of Meeting: March 6-9, 1990.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open:
March 6, 1990, 7 p.m.-8 p.m.

Closed:
March 6, 1990, 8 p.m.-11 p.m.
March 7, 1990, 8 a.m.-5 p.m.
March 8, 1990, 8:30 a.m.-5 p.m.
March 9, 1990, 8:30 a.m.-adjournment

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, room 520, Executive Plaza North Building, Telephone: 301, 496-1485.

Date of Meeting: March 6-7, 1990.

Place of Meeting: American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, Maryland.

Open:
March 6, 1990, 8:30 a.m.-9:30 a.m.

Closed:
March 6, 1990, 9:30 a.m.-5 p.m.
March 7, 1990, 8 a.m.-adjournment

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: February 2, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-2983 Filed 2-7-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-4050-91-H321]

Availability and Public Hearing; Draft Wilderness Suitability Study and Environmental Impact Statement for the Sleeping Giant and Sheep Creek WSAs; Montana

AGENCY: Butte District Office, Bureau of Land Management Interior.

ACTION: Notice of Availability of and Public Hearing on the Draft Wilderness Suitability Study and Environmental Impact Statement for the Sleeping Giant and Sheep Creek WSAs.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and sections 603(a) and 202(a) of the Federal Land Policy and Management Act of 1976, the Department of Interior has prepared a Draft Wilderness Suitability Study and Environmental Impact Statement for the Sleeping Giant and Sheep Creek WSAs. The proposed action recommends that the two areas not be designated wilderness and that they continue to be managed under the existing Area of Critical Environmental Concern Management Plan of December 1988.

The Sleeping Giant and Sheep Creek WSAs total 6,487 acres and 3,927 acres respectively. These proximity areas are located near Holter Lake in west-central Montana. Helena, Montana is located approximately 30 miles south.

DATES: Written comments on the draft document must be postmarked no later than May 9, 1990. A public hearing will be held on March 27, 1990, at 7 P.M. at Jorgensons Holiday Motel in Helena, Montana. Individuals wishing to testify will be limited to 10 minutes and are requested to contact the Butte District Manager prior to the meeting.

ADDRESSES: Written comments on the draft document should be addressed to: Jim Owings, District Manager, Bureau of Land Management, Butte District Office, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: Brad Rixford, Project Manager, Butte District Office, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702; phone (406) 494–5059.

SUPPLEMENTARY INFORMATION: Copies of the draft document are available at the public libraries in Helena and Great Falls and from the following BLM offices:

Butte District Office, Bureau of Land Management, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702; phone (406) 494–5059.

Montana State Office, Bureau of Land Management, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107; phone (406) 657–6561.

James R. Owings,

District Manager.

[FR Doc. 90–2963 Filed 2–7–90; 8:45 am]

BILLING CODE 4310-DN-M

Oregon; Lower Deschutes River Management Plan; Preliminary Issues and Alternatives; Public Meeting

AGENCY: Bureau of Land Management; (OR–050–4410–08:GPO–109).

ACTION: Notice of intent and availability of the Lower Deschutes River Management Issues and Alternatives document.

SUMMARY: Pursuant to §43 CFR 1610.3 and 1610.4–5, the Department of the Interior, Bureau of Land Management, Prineville District Office, in cooperation with nine other managing agencies and the Deschutes River Management Committee, has developed preliminary issues and alternatives to facilitate the development of the Lower Deschutes River Management Plan.

SUPPLEMENTARY INFORMATION: The plan will result in resource management decisions for the lower 100 miles of the Deschutes River located in Wasco, Sherman and Jefferson counties. Major management issues include boating, camping, fishing, wildlife habitat, water quality and quantity and cultural resources.

The draft plan and EIS will be available for pubic review in the summer of 1990 and the final plan is scheduled to be completed in the fall/winter of 1990.

Copies of the Lower Deschutes River Issues and Alternatives document have been sent to the BLM and State Parks mailing list. Copies are also available at: BLM, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754.

The public is invited to submit written comments on the issues and alternatives by March 28, 1990.

The public comment period and meetings on the draft plan/EIS will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Brian Cunninghame, Bureau of Land Management, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754, (Telephone 503–447–4115).

DATES: Comments must be received by March 28, 1990. Please direct written comments and/or requests for copies of the planning document or additional information to Brian Cunninghame.

Dated: February 2, 1990.

James L. Hancock,

District Manager.

[FR Doc. 90–2960 Filed 2–7–90; 8:45 am]

BILLING CODE 4310-33-M

[ID-050-09-4320-14]

Meeting of Shoshone District Grazing Advisory Board

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATES: Thursday, March 15, 1990, at 9:00 a.m.

ADDRESSES: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, ID 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following item: (1) BLM/State land exchange status report, (2) Trichomoniasis and the State testing program, (3) Rangeland Excellence discussion and video, (4) Craters-of-the-Moon National Park proposal status report, (5) Riverwood Ranch acquisition update, (6) development of water-rights on public land for private use, (7) Bennett Hills RMP progress report, and (8) disbursement of Advisory Board funds.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. appendix 1) and Department of Interior regulations, including 43 CFR part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 11:00 and 12:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by Tuesday, March 13, 1990. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon H. Idso,

Associate District Manager.

[FR Doc. 90–2958 Filed 2–7–90; 8:45 am]

BILLING CODE 4310-GG-M

[CO-03-90-4332-08-8500]

Wilderness Inventory Decisions, Colorado; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to the Colorado State Director's Final Wilderness Inventory Decisions for Slumgullion Slide WSA (CO-030-211) and Sparling Gulch/Friends Creek WSA (CO-030-068/213).

SUMMARY: This notice serves to amend the previous Final Wilderness Inventory Decisions for the Slumgullion Slide WSA (CO-030-211) and the Sparling Gulch/Friends Creek WSA (CO-030-88/213) as announced by publication in the Federal Register Vol. 45, No. 222, Friday, November 14, 1980, and Vol. 46, No. 2, Monday, January 5, 1981. The decision is to delete these less than 5,000-acre Wilderness Study Areas (WSA) from wilderness study status, because the adjacent Forest Service, USDA lands on which they relied for their wilderness values are no longer under consideration for wilderness. These two areas, the Slumgullion Slide WSA with 1,960 acres and the joint Sparling Gulch/Friends Creek WSA with 1,754 acres, will be dropped as WSAs and will no longer be subject to the Bureau of Land Management's (BLM) Interim Management Policy for lands under wilderness review. This notice also serves to announce a protest period for this decision which begins on the day of this announcement and continues for 30 days.

EFFECTIVE DATE: This decision will become effective March 12, 1990.

FOR FURTHER INFORMATION CONTACT: Barry Tollefson, Area Manager, Gunnison Resource Area, 216 N. Colorado Street, Gunnison, Colorado 81230. The telephone number is (303) 641-0471. Protests should be submitted to the State Director, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

SUPPLEMENTARY INFORMATION: According to the Bureau of Land Management's Wilderness Inventory Handbook, issued September 27, 1978, the Bureau specified that a roadless area of public lands could be identified as a WSA despite being smaller than 5,000 acres if it is:

1. Contiguous with land managed by another agency which has been formally determined to have wilderness or potential wilderness values, or

2. Contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more, or

3. Subject to strong public support for such identification, and it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management.

More than 150 WSAs were identified under these criteria. Included among these were the Slumgullion Slide WSA and the combined Sparling Gulch/Friends Creek WSA. Both were adjacent to the Forest Service RARE II Area No. 218 (31,990 acres), and, therefore, qualified as WSAs under criterion 1 above.

Subsequent to the State Director's Final Wilderness Inventory Decision in 1980, the Forest Service has released from further wilderness study the portions of their RARE II Area No. 218 that were adjacent to the above BLM study areas. Therefore, these areas no longer qualify as WSAs under criterion 1. For the same reason they would not qualify under criterion 2. Neither during nor since the inventory phase were either of these WSAs subject to strong public support. In addition, neither are of sufficient size to be manageable as wilderness on their own as required by criterion 3.

Therefore, these areas do not meet any of the three criteria necessary for an area of less than 5,000 acres to qualify as a WSA.

The two WSAs have been determined to no longer qualify for WSA status, and they are deleted from that status effective March 12, 1990. The areas will thereupon cease to be subject to BLM's Interim Management Policy for Lands under Wilderness Review.

Dated: January 26, 1990.

Tom Walker,

Associate State Director.

[FR Doc. 90-2932 Filed 2-7-90; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Availability of Draft Revised Recovery Plan for Eastern Timber Wolf for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft revised Recovery Plan for the Eastern Timber Wolf. This species occurs on public and private lands in Minnesota, northern Wisconsin, and the Upper Peninsula of Michigan. The objective of the revised plan is unchanged from the original plan. However, several important changes are made in the revision, including the establishment of wolf population goals for land areas within wolf range, and emphasizing the need to minimize road densities within wolf habitat. The Service solicits review and comment from the public on this draft revised recovery plan.

DATES: Comments on the draft revised recovery plan must be received on or before April 9, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy at the following offices during normal business hours:

U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Room 648, Ft. Snelling, Twin Cities, Minnesota 55111, (612) 725-3276

U.S. Fish and Wildlife Service, 301 Manly Miles Building, 1405 South Harrison Road, East Lansing, Michigan 48823, (517) 337-6650

U.S. Fish and Wildlife Service, University of Wisconsin—Green Bay, Room WH 480, Green Bay, Wisconsin 54301-7001, (414) 465-2682

U.S. Fish and Wildlife Service, Division of Endangered Species, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100 Extension 316

U.S. Fish and Wildlife Service, 22 Bridge Street, Ralph Pill Marketplace, Fourth Floor, Concord, New Hampshire 03301-4901, (603) 225-1411

U.S. Fish and Wildlife Service, 100 Grange Place, Room 202, Cortland, New York 13045, (607) 753-9335

U.S. Fish and Wildlife Service, Division of Endangered Species, 75 Spring St., SW, Atlanta, Georgia 30303, (404) 331-3580

U.S. Fish and Wildlife Service, 100 Otis St., Room 224, Asheville, North Carolina 28801, (704) 259-0321

U.S. Fish and Wildlife Service, Branch of Listing and Recovery, 4401 N. Fairfax Drive, Suite 400, Arlington, Virginia 22203, (703) 358-2171

A copy of the draft plan can also be purchased for $11.50, including postage and handling. Orders should be placed with:

Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301-492-6403 or 1-800-582-3421.

Written comments and materials regarding the revised recovery plan should be addressed to James Engel at the Twin Cities address, above.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Twin Cities address.

FOR FURTHER INFORMATION CONTACT: James Engel, Chief, Division of Endangered Species, at the above Twin Cities address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species which are native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels needed for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended, (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Recovery Plan for the Eastern Timber Wolf was first completed and approved in 1978. It is being revised at this time because of advances in Service understanding of wolf biology, changing habitat conditions, and a refinement of the strategies designed for the recovery of the species and its removal from the list of endangered and threatened species. The overall objective of the recovery plan remains unchanged: to maintain and reestablish viable populations of the eastern timber wolf in as much of its former range as is feasible. The criteria for measuring attainment of this objective likewise remain unchanged: (1) the survival of the wolf in Minnesota is assured, and (2) at least 1 viable population of eastern timber wolves outside Minnesota and Isle Royale in the contiguous 48 states of the U.S.A. is re-established. Significant changes which are incorporated in the draft revision of the original recovery plan are:

1. Wolf population goals for the year 2000 are established for all categories of public, as well as private, land within wolf range in Minnesota, Wisconsin, and Michigan.
2. Emphasis is placed upon keeping record densities at or below one road mile per square mile in designated critical habitat and in other areas of potential habitat needed to achieve recovery objectives.

Public Comments Solicited

The Service solicits written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 29, 1990.

Marvin Moriarty,

Acting Regional Director.

[FR Doc. 90-2929 Filed 2-7-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, March 10, 1990, at the Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established by *Public Law 91-664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfield, Chairman, Washington, DC,
Mrs. Dorothy Tappe Grotos, Arlington, Virginia,
Mr. Samuel S.D. Marsh, Bethesda, Maryland,
Mr. James F. Scarpelli, Sr., Cumberland, Maryland,
Ms. Elise B. Heinz, Arlington, Virginia,
Professor Charles P. Poland, Jr., Chantilly, Virginia,
Captain Thomas F. Hahn, Shepherdstown, West Virginia,
Mr. Rockwood H. Foster, Washington, DC,
Mr. Barry A. Passett, Washington, DC,
Mrs. Jo Reynolds, Potomac, Maryland,
Ms. Nancy C. Long, Glen Echo, Maryland,
Mrs. Minny Pohlmann, Dickerson, Maryland,
Dr. James H. Gilford, Frederick, Maryland,
Mr. Edward K. Miller, Hagerstown, Maryland,
Mrs. Sue Ann Sullivan, Williamsport, Maryland,
Mrs. Josephine L. Beynon, Cumberland, Maryland,
Mr. Robert L. Ebert, Cumberland, Maryland.

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: February 2, 1990.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 90-2864 Filed 2-7-90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-433 (Final)]

Certain Residential Door Locks and Parts Thereof From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of residential door locks and parts thereof, provided for in

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Lodwick dissenting.

subheading 8301.40.60 [3] of the Harmonized Tariff Schedule of the United States (previously reported under item 646.9210 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 6, 1989, following a preliminary determination by the Department of Commerce that imports of residential door locks and parts thereof from Taiwan were being sold at LTFV within the meaning of section 735(a) of the act (19 U.S.C. 1673(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 25, 1989 (54 FR 43504). The hearing was held in Washington, DC, on December 21, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel. [4]

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 2, 1990. The views of the Commission are contained in USITC Publication 2253 (January 1990), entitled "Certain Residential Door Locks and Parts Thereof from Taiwan: Determination of the Commission in Investigation No. 731–TA–433 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: February 5, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–2986 Filed 2–7–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Kankakee, Beaverville and Southern Railroad Co.; Corrected Notice of Operation Exemption [1]

[Finance Docket No. 31569]

Kankakee, Beaverville and Southern Railroad Company (KBSR) has filed a notice of exemption to operate a 24.5-mile line of railroad located in Benton County, IN. The line consists of two segments, one of which was abandoned by Consolidated Rail Corporation (Conrail) in Docket No. AB–167 (Sub-No. 991N), *Conrail Abandonment of the Fowler Secondary Track in Benton County, Indiana* (not printed), served February 13, 1987, and the other by Norfolk and Western Railway Company (NW) in Docket No. AB–290 (Sub-No. 16), *Norfolk and Western Railway Company—Abandonment—Between Lafayette, IN and Gibson City, IL, in Benton County, IN and Vermillion and Ford Counties, IL* (not printed), served June 28, 1988. The Conrail segment extends between Swanington, IN, near former Conrail milepost 198.50, to Templeton, IN, near former Conrail milepost 192.44 and NW milepost SP–277.4. The NW segment extends from that point at Templeton to Lafayette, IN, near former milepost SP–259.0. Illiana Railroad Services, Inc. (Illiana), was to acquire the Conrail segment from Benton Central Railroad Company, a noncarrier, and the NW segment from NW on or after December 15, 1989. KBSR will operate both segments under an agreement with Illiana.

Comments must be filed with the Commission and served on Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 5, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–2964 Filed 2–7–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7927 et al.]

Proposed Exemptions; Lyons Tool & Engineering, Inc. Restated Profit Sharing Plan & Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform

[3] Parts of door locks are provided for in subheading 8301.60.00 of the HTS.

[4] A portion of the hearing was conducted *in camera* (54 F.R. 53379 (Dec. 28, 1989)).

[1] The notice of exemption served January 10, 1990, and published in the Federal Register on January 11, 1990, (55 FR 1114) erroneously included a 1.18-mile segment of rail line in Swanington, IN, from a point near Conrail milepost 199.68 to a point near former Conrail milepost 198.50.

interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Lyons Tool & Engineering, Inc. Restated Profit Sharing Plan and Trust, Located in Warren, Michigan

[Application No. D–7927]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continued leasing of certain improved real property (the Property) by the Plan to Lyons Tool & Engineering, Inc. (Lyons), a party in interest with respect to the Plan, provided the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective December 21, 1989.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 12 participants. As of April 30, 1989, the Plan had assets of $1,248,467.

2. The Plan purchased the Property, located at 13710 East Nine Mile Road, Warren, Michigan on October 8, 1971, for $47,909. The Property consisted of land improved by a building. Shortly thereafter, the Plan and Lyons entered into a lease (the Original Lease) whereby the Property was leased to Lyons primarily as a storage facility. The Plan has continued to lease the Property to Lyons since 1971. The applicants represent that the Original Lease satisfied the requirements of section 414(c)(2) of the Act and, therefore, was exempt statutorily from the prohibitions of section 406 and 407 of the Act through June 30, 1984.[1]

3. The applicant acknowledges that the continuation of the Original Lease beyond June 30, 1984 constituted a prohibited transaction under the Act. Accordingly, Lyons represents that it will pay to the Internal Revenue Service any excise tax which may apply from July 1, 1984 to the effective date of the exemption proposed herein in connection with the Original Lease within 90 days of publication in the **Federal Register** of the granting of this proposed exemption. Lyons further represents that it will pay to the Plan the difference between the fair market rental value of the Property and the actual rent paid by Lyons to the Plan, plus interest at the appropriate rate as determined by the Plan's independent fiduciary (see rep. 6, below), from July 1, 1984 to the present, within 90 days of publication in the **Federal Register** of the grant of the exemption proposed herein. Finally, Lyons represents that it will reimburse the Plan for any and all taxes, assessments, insurance premiums and repair expenses it paid in connection with the Property, plus interest at the appropriate rate as determined by the Plan's independent fiduciary, from July 1, 1984 to the present within 90 days of the publication in the **Federal Register** of the grant of the exemption proposed herein.

4. On December 21, 1989, the Plan and Lyons entered into a new lease agreement (the New Lease) for the Property. Under the terms of the New Lease, Lyons is to pay to the Plan $16,184 annually for the Property. The New Lease provides for triple-net features such that Lyons will be responsible to pay for all taxes, insurance and maintenance on the Property. The New Lease provides for a five year term. The base rent will be increased annually (but not decreased) to reflect increases in the Department's Consumer Price Index (CPI). At the end of the five year term, the Plan's independent fiduciary (see rep. 6, below) will cause an appraisal of the Property to be undertaken to ensure that the then base rent accurately reflects the fair market rental value for the Property. The independent fiduciary must approve any renewal of the lease, and will condition any such approval on the rent being increased, if necessary, to reflect the appraised fair market rental value.

5. Mr. William G. Wagoner of the Manhattan Co., Inc., an independent industrial realtor located in Troy, Michigan, has appraised the Property as having an annual fair market rental value of $16,184 as of December 19, 1989. Mr. Donald B. Stewart of the Manhattan Co., Inc., has represented that the Property as of April 26, 1989 had a fair market value of approximately $122,000. Thus, the Property represents approximately 10 percent of the Plan's assets.

6. The interests of the Plan under the New Lease for all purposes are represented by Mr. William R. Cantwell. Mr. Cantwell represents that he is a certified public accountant who is unrelated to Lyons, except that he provides accounting services to Lyons. However, the services he provides to Lyons amount to less than 1 percent of his accounting practice on an annual basis. Mr. Cantwell represents that he has substantial experience representing retirement plans and plan fiduciaries and advising them in connection with plan investments. Mr. Cantwell acknowledges his fiduciary relationship to the Plan and understands his duties, liabilities and responsibilities as a Plan fiduciary under the Act.

7. Mr. Cantwell represents that he has examined the terms and conditions of the New Lease and the independent appraisal prepared by Mr. Wagoner, and he has determined that, as of December 21, 1989, the New Lease is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. Mr. Cantwell represents that he has reviewed the Plan's entire investment portfolio and has considered the Plan's liquidity needs and diversification and otherwise complies with the Plan's investment objectives. Mr. Cantwell represents that he has used due care in examining the safety as well as probable income to be derived from the New Lease and has concluded that the New Lease will offer a fair market return that is commensurate with prevailing lease rates. Mr. Cantwell has agreed to monitor the New Lease throughout its duration and take whatever action is necessary and proper to safeguard the interests of the Plan and its participants and beneficiaries. Mr. Cantwell has agreed to review the New Lease not less than 45 days prior to the end of each year to ensure that the

[1] The Department expresses no opinion on whether the Original Lease satisfied the requirements of section 414(c)(2) of the Act.

next yearly term shall include yearly base rent increases which properly reflect increases in the CPI. Mr. Cantwell has further agreed to review the New Lease not less than 45 days prior to the end of its term to determine whether it continues to be in the best interests of the Plan and its participants and beneficiaries. Before approving any renewal of the New Lease, Mr. Cantwell will require an appraisal to be made of the Property, and will not enter into any renewal on behalf of the Plan unless the annual rental under such renewal is not less than the appraised fair market rental value of the Property. Lyons currently anticipates renewing the New Lease for two additional five year terms following the end of the current lease term. Any renewals of the New Lease will be under the same terms and conditions as the current lease, including a five year term and annual adjustments in the base rent which reflect increases (but not decreases) in the CPI. Mr. Cantwell represents that the New Lease reflects, and any renewal of the New Lease will reflect fair market terms of a commercial lease in the subject locality for the subject Property.

8. In summary, the applicant represents that the New Lease satisfies the criteria of section 408(a) of the Act because: (1) the Property represents no more than 10 percent of the Plan's assets; (2) the New Lease is a triple-net lease requiring Lyons to pay all costs of repair and maintenance and all taxes and insurance on the Property; (3) the interests of the Plan under the New Lease are represented by Mr. Cantwell, an independent fiduciary who will monitor performance of the terms and conditions of the New Lease on behalf of the Plan; (4) the rental to be received by the Plan has been determined by a qualified, independent appraiser; (5) Mr. Cantwell has determined that the New Lease is appropriate for the Plan and in its best interests; (6) Lyons will pay all applicable excise taxes which may be due by reason of the Original Lease within 90 days of the publication in the Federal Register of the grant of the exemption proposed herein; and (7) Lyons will pay the Plan difference between the fair market rental value of the Property and the amount of rental acutally paid, together with interest on such difference, for the period July 1, 1984 until December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department telephone (202) 523-8881. (This is not a toll-free number.)

Cumberland Farms Profit Sharing Retirement Plan (the Retirement Plan); Cumberland Farms Supplemental Profit Sharing Retirement Plan (the Supplemental Plan); and Cumberland Farms Transferred Employees Pension Plan (the Pension Plan; collectively, the Plans), Located in Canton, Massachusetts

[Application Nos. D-7807, D-7808 and D-7809]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective March 22, 1989, for a period of five years, to a series of loans (the Loans) by each of the Plans to Cumberland Farms, Inc. (the Employer) and/or Bay Colony Realty Associates (BCR; collectively, the Obligors), parties in interest with respect to the Plans; provided that the terms and conditions of the Loans are not less favorable to the Plans than those obtainable in similar transactions negotiated at arm's length between unrelated third parties on the date each of the Loans is consummated; and further provided that the aggregate amount of outstanding Loans at any one time not exceed twenty-five (25 percent) of the fair market value of each of the Plan's assets.

Temporary Nature of Exemption: The proposed exemption is temporary and, if granted, will expire five years from the effective date of the grant. Subsequent to the expiration of the exemption, the Plans may continue to hold, until repayment, Loans originated during the proposed five-year exemption period; provided that such holding period does not exceed fifteen years for each of the Loans.

EFFECTIVE DATE: If granted, this exemption will be effective March 22, 1989.

Summary of Facts and Representations

1. The Retirement and Supplemental Plans are defined contribution profit sharing plans. The Pension Plan is a defined benefit pension plan with 228 participants and total assets of $14,050,740 as of September 30, 1987. As of September 30, 1987, the Retirement Plan had 5,189 participants and total assets of the $17,837,480, and the Supplemental Plan had 1,936 participants and total assets of $5,245,937.

2. The assets of the Plans are held in the Cumberland Farms Employees' Retirement Trust (the Trust). The trustees (the Trustees) of the Trust are Francis G. Locklin, Jr. and Donna L. Walsh. All of the Trustees are employees of the Employer, the Plans' sponsor.

3. The Employer is an "S" corporation as defined under section 1362(a) of the Code and is engaged in the convenience store and gasoline distribution business. All of the stock of he Employer is benefically owned, directly or indirectly, by members of the Haseotes family. Certain members of the Haseotes family also own all of the interests of BCR, a partnership which is engaged in the leasing of real property to the Employer and other retail establishments.

4. The Department previously granted an exemption to the Employer in Prohibited Transaction Exemption 85-50 (50 FR 9730, March 11, 1985) to permit the continuation beyond June 30, 1984 of certain loans (the Prior Loans) from the Plans to V.S.H. Realty, Inc., a predecessor in interest to the Employer. All of the Prior Loans have been paid in full.

5. The applicant now requests an exemption to permit the Plans to make the Loans on a recurring basis to the Obligors for a period of five years. The applicant represents that the Plans commenced making the Loans on March 22, 1989 when the necessary safeguards (including the presence of an independent fiduciary) were operational.

It is represented that no Loans have been or will be made without the review, approval, and monitoring the terms of the Loans by the Plans' independent fiduciary (the Independent Fiduciary) and that such terms have not been or will not be less favorable to the Plans than those obtainable for similar transactions negotiated at arms'-length between unrelated third parties.

Subsequent to the expiration of the proposed exemption, the Plans may continue to hold, until repayment, Loans originated during this five year period; however, the term of each Loan may not exceed fifteen years. The proceeds of the Loans have been or will be used by the Obligors to purchase or refinance real property used in connection with their business.

6. Each of the Loans has been or will be evidenced by a promissory note (the Note) for a term not to exceed fifteen

years. Payments of principal and interest have been and will be made in monthly installments. The interest rate for each Loan has been and will be at least equal to the current market rate for new loans of comparable amount, quality, and maturity. In no event, however, has the interest rate been or will it be less than the prevailing prime rate reported in the Wall Street Journal plus three-quarter percent adjusted quarterly, as determined by the Plans' Independent Fiduciary.

7. The applicant has represented that in addition to the appointment of the Independent Fiduciary, certain safeguards are in place to protect the interests of the Plans. First, the Loans have been or will be secured by a first mortgage on the real property which has been or will be purchased or refinanced with their proceeds and recorded in accordance with the laws of the state in which the property is located, with the Plans as mortgagee. Second, the fair market value of the collateral at all times, has exceeded or will exceed 150 percent of the total outstanding principal balance of the Loans. Third, the total amount of Loans made by and outstanding from any one of the Plans at any time during the exemption period will not exceed 25 pecent of the fair market value of its assets. Fourth, no one Loan has exceeded or will exceed 10% of the fair market vlaue of the assets of any one of the Plans. Lastly, in order to protect the Plans in the event of any default, the Obligors have executed and will continue to execute a conditional assignment to the Plans of rents for current and future leases on the property acquired or refinanced with the proceeds of the Loans.

8. Joseph G. Tremeau, of Tremeau Appraisal, Inc. in Manchester, New Hampshire has served as the Plans' Independent Fiduciary for the Loans since February 22, 1989. The Independent Fiduciary has no affiliation or relationship with the Obligors or their principals. The Independent Fiduciary was advised by legal counsel as to his duties, responsibilities and liabilities as a fiduciary under the Act. He has full authority to cause the Loans to be made and to enforce all their terms and conditions.

9. The Independent Fiduciary has reviewed the exemption application, the financial statements of the Obligors, the Plans' investment portfolios and other investment opportunities available to the Plans. In addition to reviewing the proposed terms and conditions of the Loans, the Independent Fiduciary has considered: (a) the overall investment portfolio of the Plans; (b) the cash flow needs of the Plans; and (c) the effect on the diversification of each Plan's assets by an investment in a Loan.

10. The Independent Fiduciary determined immediately prior to the consummation of the first Loan on March 22, 1989, that it was an appropriate and suitable investment for the Plans; that the interest rate of each Loan has at least equal to the current market rate for new loans of comparable amount, quality, and maturity, but in no event less than the prime rate plus three-quarter percent; and that the other terms of the Loan were at least as favorable to the Plans as those which would be received in a similar arm's-length transaction with an unrelated third party. The Independent Fiduciary will continue to analyze each new Loan in a similar manner throughout the term of the exemption.

11. The Independent Fiduciary has been and will continue to be empowered, authorized, and directed to monitor and enforce the terms of any Note between the Plans and the Obligors, including, without limitation, making demand for timely payment and bringing suit or other appropriate process on behalf of the Plans against the Obligors in the event of default. The Independent Fiduciary must report at least annually to the Trustees on the performance of each of the Loans (including whether the value of the collateral securing the Loans remains equal to at least 150 percent of the then outstanding principal Loan balance). If, as of the first day of any calendar quarter, the Independent Fiduciary determines that the value of the collateral for any Loan is not at least 150 percent, the Obligors will be required to furnish to the Plans additional collateral having a value which is at least equal to the amount of the deficiency, or to prepay the Loan to the extent necessary to eliminate the deficiency.

Based on the above analysis, the Independent Fiduciary has determined that the Loans are in the best interest of the Plans and their participants and beneficiaries.

12. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Loans have been and will continue to be approved, monitored and enforced by an independent fiduciary;

(b) The Loans have been and will at all times be secured by collateral having a value of at least 150 percent of the outstanding principal balance of the Loans;

(c) The exemption will be for a five-year period, and the term of each Loan has been and will be limited to fifteen years;

(d) The total amount of the Loans made by and outstanding from the Plans has not exceeded and will not exceed twenty-five percent of the assets of each of the Plans;

(e) The Independent Fiduciary has determined and will continue to determine that each Loan is in the best interest of the Plans and their participants and beneficiaries before the Plans enter into any Loans with the Obligors; and

(f) The Obligors have executed and will continue to execute a conditional assignment to the Plans of rents for current and future leases on the property acquired or refinanced with the proceeds of the Loans in order to protect the Plans in event of any default.

For further information contact: Mrs. B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll free number.)

The Equitable Life Assurance Society of the United States (Equitable) Located in New York, NY

[Application No. D-7998]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective October 30, 1985, to: (1) the acquisition by Equitable's Separate Account No. 141 (the Separate Account), a single customer separate account maintained on behalf of the IBM Retirement Plans (the Plans), of a 50% equity interest in the Granite Run Mall, in which Equitable's General Account and Equitable Variable Life Insurance Company (EVLICO) own the remaining equity interests, and which is subject to a mortgage loan (the Loan) from the General Account; (2) the continuation of the Loan from the General Account to the joint venture which owns the Granite Run Mall; and (3) any modification of the terms of the Loan; provided the following conditions have been and will continue to be met:

(a) The initial participation of the Separate Account in the purchase of the Granite Run (the Mall) was approved in advance by the independent fiduciary

for the Separate Account after a complete review of all of the relevant information concerning the Mall and the Loan;

(b) The independent fiduciary will continue to monitor the investment to determine what action, if any, should be taken with respect to the investment; and

(c) Any modification of the Loan will be initiated by the independent fiduciary.

Preamble

On October 3, 1988, the Department published an individual exemption, Prohibited Transaction Exemptions 88-92 (PTE 88-92, 53 FR 38798), which exempts certain transactions that may occur as a result of the sharing of real estate investments among various accounts maintained by Equitable, including Equitable's General Account and accounts maintained by Equitable in which employee benefit plans participate, provided that specified conditions are met. In the application for PTE 88-92, Equitable did not request exemptive relief for the types of transactions for which relief is proposed herein. Equitable represents that any transactions which have arisen or may arise in conjunction with the subject transactions and which are described in PTE 88-92 have met or will meet all the applicable conditions of that exemption. No further exemption for such transactions is being proposed herein.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of ERISA.

Equitable maintains several pooled separate accounts in which pension, profit-sharing, and thrift plans participate. Equitable also manages all or a portion of the assets of a number of large plans through several single customer separate accounts and investment advisory accounts. One of these single customer separate accounts is the Separate Account, for which Equitable serves as investment manager. A portion of the Granite Run Mall investment has been allocated to the Account as described more fully below.

Equitable has substantial experience in managing real estate investments. Of the more than $58 billion in total assets held by Equitable at year-end 1988, Equitable's General Account held $11.7 billion in real estate mortgage loans and $4.5 billion in equity investments in real property and interests in real estate joint ventures. Additionally, more than $5.4 billion in real property investments were held in Equitable's real estate separate accounts.

In connection with Equitable's management of these real estate investments, Equitable has established an advisory relationship with Equitable Real Estate Investment Management, Inc. (EREIM), an indirect wholly-owned subsidiary of Equitable established in May, 1984. Pursuant to a contract between Equitable and EREIM, EREIM provides investment advice to Equitable regarding the development of investment opportunities and the acquisition, holding and disposition of real estate investments. In addition, EREIM's portfolio managers make recommendations regarding the allocation of interest in real estate investments among Equitable's various accounts based on the respective account's investment policies and objectives, liquidity and diversification needs, cash availability, and the compatibility of the proposed investment with the account's existing portfolio.

Acquisition and allocation recommendations made by EREIM's staff must be approved by the Investment Policy Committee of Equitable, which is composed of senior Equitable officers, including the chief investment officer of Equitable, and the Investment Committee of Equitable's Board of Directors, which has overall responsibility for the making of real estate investments on behalf of all of Equitable's accounts.

2. The Plans had approximately 285,900 participants and $19.5 billion in assets as of December 31, 1988. The Separate Account is a single customer real estate separate account maintained by Equitable on behalf of the Plans. As of December 31, 1988, the total net assets of the Separate Accounts equalled $457.3 million. The total assets in the Separate Account represent approximately 2.0 percent of the total assets of the Plans.

Equitable also maintains Separate Accounts Nos. 136, 143, and 149 which are single customer separate accounts established on behalf of the IBM plans. Separate Account No. 136, which invests in industrial research and development properties, held $213.0 million of assets as of December 31, 1988. As of December 31, 1988, separate Accounts Nos. 143 and 149, which invest in commercial office buildings, held assets of $418.5 and $76.4 million, respectively.

3. On October 30, 1985, Equitable acquired 100 percent of the equity interests in a joint venture that owns the Granite Run Mall from Murray H. Goodman, individually, for a total consideration of $84.7 million, of which $20.4 million is attritutable to the assumption of the Loan. The Loan was entered into the 1972 between Mr. Goodman and Provident National Bank (Provident), bears an interest rate of 8.75% and is due in February, 2000. The terms of the Loan were negotiated on arm's-length basis between Provident and Mr. Goodman, both of whom are unrelated to Equitable. Provident assigned the Loan to Equitable in 1975.

The applicant represents that Granite Run Mall is the largest enclosed mall shopping center in Delaware County, Pennsylvania. Its anchor tenants included Sears, Roebuck & Co., Gimbels, J.C. Penney, and Strawbridge and Clothier. In addition to the existing mall facilities, the seller effected the satisfactory completion of a multi-theatre movie complex and the conversion of an existing car dealership into additional retail space. The Mall's location is conveniently accessible via major roadways to the existing population concentrations in its area. The population of this part of Delaware County is affluent and growing. In addition, EREIM has determined that Granite Run Mall is well-situated to resist competition from other retail facilities in the area.

4. The decision of the Investment Committee to acquire Granite Run Mall and to allocate the equity interests therein between the Separate Account, the General Account and EVLICO was based on the recommendation of EREIM, which was made in the normal course of the investment advisor relationship between EREIM and Equitable. Officers in EREIM's Philadelphia regional office developed this investment opportunity and, after a thorough investigation and analysis of the property and its potential investment value, including an on-site inspection of the mall, a property appraisal and a credit analysis of the mall's major tenants, recommended that the property be acquired by Equitable. In accordance with Equitable's procedures for making real estate investments, this recommendation was approved by the home office after a thorough review.

At the portfolio managers' regular monthly meeting, the portfolio manager for the Separate Account determined

that a portion of the Granite Run Mall investment would be appropriate for the Account (as did the portfolio managers for the General Account and EVLICO, respectively). Pursuant to Equitable's investment allocation procedures described above, it was determined that the equity interests in the property be allocated 50 percent to the Separate Account, 40.5 percent to the General Account, and 9.5 percent to EVLICO. The liability for the purchase money mortgage loan was allocated to the participating account on the same basis.[2] However, because the Separate Account and EVLICO preferred not to participate in the debt interest because of its relatively low rate of return, the General Account continued to be the sole lender on the existing Loan. The recommended acquisition and allocation was subsequently reviewed and approved by the Investment Policy Committee and the Investment Committee of the Board of Directors and by the independent fiduciary for the Separate Account.

5. The independent fiduciary is a three person committee (the Committee) made up of three officers of the Jackson-Cross Company (Jackson-Cross) appointed by Equitable to serve as the independent fiduciary for the Separate Account. The Committee members are Charles Seymour, Chairman, Arnold Tesh, and David Craine. After receiving both written materials and oral presentation regarding the Committee members and their functions, responsibilities and procedures, IBM officials approved the appointment of the Committee.

Jackson-Cross is a Pennsylvania corporation engaged, directly and through its affiliates, in the business of commercial real estate consulting, brokerage, management, appraisal and related activities. Jackson-Cross' principal offices are located in Philadelphia, Pennsylvania. It also has offices in Wilmington, Delaware, and Washington, DC. It has been involved in the commercial real estate business since 1876. The company has substantial experience in commercial real estate matters, including consulting, brokerage, property management, appraisal and the review and approval of construction budgets.

The company currently manages approximately 10 million square feet of diverse industrial and commercial properties and office building space.

Neither Equitable nor its subsidiaries or affiliates have any interest in Jackson-Cross. Neither does Jackson-Cross or any of its principals have any interest in Equitable or any of its subsidiaries or affiliates.

IBM will determine annually whether to retain the Jackson-Cross officers as the Committee members for the Separate Account. Equitable and its affiliates have no authority to remove or replace the Committee members. However, any Committee member may be removed and replaced for cause by the other Committee members. In order for a Committee member to be removed and replaced for cause, there must be sufficient and reasonable ground for removal which are related to the person's fitness to perform the required duties. If a vacancy on the Committee should occur for any reason, a replacement will be appointed by a majority vote of the remaining members of the Committee. Replacement members may be suggested by anyone, including the Committee members or Equitable.

The principal role of the Committee is to approve or reject recommendations made by Equitable regarding the allocation of shared investments to an ERISA-covered account and the categories of transactions involving shared investments described in PTE 83-92. All such decisions must be based on whether the proposed action is in the best interests of the Plans participating in Separate Account. The Committee maintains written records in which all decisions made on behalf of the Separate Account and the rationale for those decisions are set forth.

In addition, the Committee is required to review at least twice annually the shared investments in the Account's shared investment portfolio to determine what action, if any, should be taken with respect to such investments, including their disposition. Further, the Committee may consider on an "as needed" basis situations or transactions involving a shared investment that may arise from time to time. Finally, the Committee will have the authority to initiate negotiations to modify any of the terms of the Loan on behalf of the Separate Account, as well as deciding whether to prepay the Loan.[3]

6. In the two months or so prior to the closing of the Granite Run Mall acquisition, the Committee thoroughly reviewed the proposed investment and the proposed allocation of the investment between the General Account, EVLICO and the Separate Account. The Committee took particular note of the General Account's existing Loan on the property. The Committee reviewed detailed investment information relating to the property, including appraisal and evaluation reports regarding the investment. Members of the Committee also made on-site inspections of the mall and its principal competitor retail shopping centers. The Committee determined that the proposed 50 percent equity interest in the investment should produce a return in excess of the investment objectives and guidelines for the Separate Account and that the investment was very desirable.

With respect to the presence of the Loan, the Committee paid particular attention to the question of whether it would be advantageous to keep the debt in place. The Committee concluded that it was appropriate to keep the Loan in place for the following reasons:

(1) The internal rate of return for the investment over the long run would be higher if the Loan remained in place;

(2) The presence of favorable leverage has influenced the price structure of the investment. Therefore, it would not seem prudent to pay it off; and

(3) The presence of favorable leverage is viewed as desirable by IBM in-house fiduciaries responsible for establishing pension plan investment policies and strategies.

At least twice each year the Committee is required to review the Granite Run Mall investment, including the Loan, and to determine whether it is in the best interests of the Separate Account to continue to hold the investment. These decisions are based on quarterly reports which the Committee receives relating to the operations of the Separate Account and any other information the Committee believes to be necessary.

7. In summary, the applicant represents that the transactions have met and will continue to meet the statutory criteria of section 408(a) of the Act because: (a) The Committee, acting as the independent fiduciary on behalf of the Plan, determined, after a thorough investigation, that the Granite Run Mall was a desirable investment for the Separate Account; (b) the Committee also determined that making the investment subject to the Loan was in the interests of the Plans; (c) the

[2] The applicant has requested exemptive relief for the potential exercise of its rights to foreclosure on the property in the event of a default on the Loan by the borrowers. The Department is not persuaded that adequate safeguards have been proposed by the applicant to protect against Equitable's potential conflict of interest in such a situation and has therefore decided not to propose such relief herein.

[3] The applicant represents that in the event the Committee initiates such negotiations, but is unable to reach an agreement with Equitable concerning the terms of a modification of the Loan terms, the Loan agreement will remain unmodified.

Committee will monitor the investment to determine what action, if any, should be taken with respect to the investment; and (d) IBM, as the Plan's sponsor, has the authority to replace any or all of the Committee members annually.

For Further Information Contact: David Lurie of the Department of Labor telephone (202) 523–8671. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or the other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2d day of February 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–2893 Filed 2–7–90; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 90–2; Exemption Application No. D–8190 et al.]

Grant of Individual Exemptions; Newell Clinic Association Self-Employed Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notice were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Newell Clinic Association Self-Employed Profit Sharing Plan (the Plan) Located in Chattanooga, Tennessee

[Prohibited Transaction Exemption 90–2; Exemption Application No. D–8190]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase of two adjacent parcels of undeveloped real property (the Properties) from Dr. Edgar Akin, a party in interest with respect to the Plan, by his account under the Plan, provided the aggregate purchase price is no less than the aggregate fair market value of the Properties on the date of the purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 13, 1989, at 54 FR 51248.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Robert L. Larson Contracting, Inc. Employees' Profit Sharing Plan and Trust (the Plan) Located in Kissimmee, FL

[Prohibited Transaction Exemption 90–3; Exemption Application No. D–8209]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of a parcel of unimproved real property (the Property), for the total cash consideration of $498,000, to Robert L. Larson and Iris D. Larson (Mr. and Mrs. Larson), who are parties in interest with respect to the Plan, provided the amount paid for the Property by Mr. and Mrs. Larson is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 13, 1989, at 54 FR 41249.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Columbia Urological Associates, P.A. Second Restated Money Purchase Plan and Columbia Urological Associates, P.A. Second Restated Profit Sharing Plan (collectively, the Plans) Located in Columbia, Tennessee

[Prohibited Transaction Exemption 90–4; Exemption Application No. D–8136 and D–8137]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain parcel of real property (the Property) located in Columbia, Tennessee by the Plans to James M. Fitts, Jr., M.D., a party in interest with respect to the Plans, provided that the consideration paid for the Property is not less than the greater of either the sum of $9,500 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 13, 1989 at 54 FR 51248.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive or whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 2nd day of February 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–2844 Filed 2–7–90; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Reestablishment of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the reestablishment of the Advisory Committee on Preservation for a two-year period.

The Archivist of the United States has determined that the reestablishment of this advisory committee is in the public interest so that the National Archives has up-to-date information on preservation technologies to ensure the preservation of permanently valuable records accessioned into the National Archives.

Dated: February 1, 1990.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 90–2938 Filed 2–7–90; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.
2. Twelve members appointed by the Speaker of the House of Representatives.
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the third town meeting of the National Commission on Children to be held in Kansas City, Missouri.

Time: 7 p.m.–8:45 p.m.; Thursday, February 15, 1990.

Place: Marlboro County High School, Bennettsville, South Carolina.

Status: 7 p.m.–8:45 p.m.; Open to the public.

Agenda: Children In Rural America.

Contact: Jeannine Atalay; (202) 254–3800.

Dated: February 5, 1990.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 90–2998 Filed 2–7–90; 8:45 am]

BILLING CODE 6820–37–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment of Academic Research Facilities Advisory Review Panel

The Deputy Director of the National Science Foundation has determined that the establishment of the Advisory Review Panel for Academic Research Facilities is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: Advisory Review Panel for Academic Research Facilities.

PURPOSE: To provide advice on the merit of proposals submitted to NSF seeking financial support for academic research facilities. Additionally, the Panel may provide oversight, general advice and policy guidance to the Research Facilities Office and the Academic Research Facilities Modernization Program.

BALANCED MEMBERSHIP PLAN: Suggestions for panel membership will come from NSF science and engineering program directorates, from eligible institutions and their associations, and from others insterested in or potentially affected by the program. In seeking balanced membership NSF will consider individual qualifications, fields of expertise, and institutional affiliations (e.g., small, medium or large, public and private, graduate and undergraduate, and minority institutions) including individual from under represented groups and different geographic areas.

RESPONSIBLE NSF OFFICIAL: William B. Cole, Jr., Executive Officer or Altie Metcalf, Staff Associate, Research Facilities Office, (202) 357–9785.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–2920 Filed 2–7–90; 8:45 am]

BILLING CODE 7555–01–M

Committee Management Establishment of Task Force on Persons With Disabilities

The Assistant Director for Administration has determined that the establishement of the Task Force on Persons with Disabilities is necessary and in the public interest in connection with the performance of duites imposed upon the Director, National Science Foundation (NSF). This determination follows consultation with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: Task Force on Persons with Disabilities.

PURPOSE: To determine the extent of under-representation of persons with disabilities in science and engineering; determine contributing factors to this under-representation in both education and employement; review NSF programs and policies and recommend, as appropriate, additions to and/or modifications in NSF programs and policies that address those factors.

BALANCED MEMBERSHIP PLAN: Membership will consist of approximately eight persons and will include representation from NSF sraff and the scientific community. The latter will be scientists and engineers with disabilities who are nationally active in the area of science and disability or who have linkages with persons in the education, training and employment of scientists/engineers with disabilities of all sorts. NSF staff members will be chosen so that appropriate program areas impacting on persons with disabilities (e.g., campus research facilities) are represented.

RESPONSIBLE NSF OFFICIAL: Mr. Jeff Fenstermacher, Assistant Director for Administration, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (202) 357–9482.

WAIVER: Because of the necessity for this ad hoc task force to meet in mid-February, GAS has waived the 15-day Notice of Establishment requirment. The meeting notice is published below.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–2921 Filed 2–7–90; 8:45 am]

BILLING CODE 7555–01–M

Persons With Disabilities Task Force; Notice of Meeting

Name: Task Force on Persons with Disabilities.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. 20550.

Date: February 26, 1990.

Time/Room: 9 a.m.–5 p.m., room 540

Type of Meeting: Open.

Contact: Brenda M. Brush, Executive Secretary of the Task Force, National Science Foundation, Room 546. Telephone Number: 202–357–5012; TDD: 357–9867.

Purpose of Meeting: To plan Task Force activities over the next six months.

Minutes: May be obtained from the Executive Secretary at the above address.

Agenda: The following items will be discussed: plans for Task Force activities; analysis of definitions of "persons with disabilities"; analysis of existing statistical data on persons with disabilities in connection with science and engineering careers and the employment pipeline; and a review of existing National Science Foundation programs relating to persons with disabilities.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–2922 Filed 2–7–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.J of Appendix R to 10 CFR part 50 to GPU Nuclear Corporation, et al. (the licensee) for the Oyster Creek Nuclear Generating Station, located at the licensee's site in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting an exemption from the requirements of section III.J of 10 CFR part 50 Appendix R "Emergency Lighting" to move into the control room the d.c. power source (batteries or battery/charger units) for the control room emergency lights. The licensee's request and bases for exemption are contained in a letter dated November 24, 1986.

The Need for the Proposed Action

The exemption is needed because compliance with the regulation would result in undue hardship and additional costs significantly in excess of those incurred by others similarly situated. Compliance with the regulation would require either relocation of the d.c. batteries and power supplies or upgrading of barriers, penetrations, and fire protection systems in the area of concern. Relocation of the batteries would involve installing racks and service connections within the control room area. This approach is not desirable since this would result in additional control room congestion as well as introducing those hazards normal to all battery installations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption from the requirement of section III.J of Appendix R to 10 CFR part 50 to provide individual battery powered emergency lighting units in the control room. The licensee has requested an exemption from the provision of section III.J of Appendix R to 10 CFR part 50 to the extent that the batteries which provide power to the emergency lights in the

control room can be damaged by fire other than a fire in the control room.

The Oyster Creek Control Room has two separate lighting systems. Based on its review of the information presented, the Commission concluded that the two separate lighting systems are adequate to assure continuous lighting in the control room for any fire postulated to occur in the plant. Therefore, the proposed exemption does not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational exposure. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental impact.

With regard to non-radiological impacts, the proposed exemption from the requirements of section III.J of Appendix R to 10 CFR part 50 involves the control room which is located within the restricted area as defined in 10 CFR part 50. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption dated November 24, 1986. Copies of the request for exemption are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated: February 2, 1990.

For the Nuclear Regualtory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–2940 Filed 2–7–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPRR–123 issued to the University of Texas (UT or the applicant) for the TRIGA Mark II Research Reactor. The facility is located on the applicant's site at the University of Texas Balcones Research Center in Sustin, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPRR–123 to December 31, 1990. The proposed action is in response to the applicant's request dated November 7, 1989, as modified by letter dated November 27, 1989.

The Need for the Proposed Action

The proposed action is needed because the construction testing, inspection, and corrective actions at the facility are not yet fully completed.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, there are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction. The impact of construction was evaluated in the Environmental Assessment prepared as part of the NRC staff's review dated May 13, 1985 of the UT construction permit application.

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

Since we have concluded that there is no significant environmental impact associated with this construction permit extension, any alternatives will either have no significant impact or greater impact than the proposed action.

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of research, education, and training. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore small areas to their original state. This would be a slight environemntal benefit, but much outweighed by the educational and economic losses from denial use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other than those evaluated in the Environmental Assessment prepared as part of the NRC staff's review dated May 13, 1985 of the UT construction permit application.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated November 7, 1989, as modified by letter dated November 27, 1989, which are available for public inspection at the Commission's Public Document Room,

Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated: February 1, 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-2941 Filed 2-7-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Notice of Consideration of Issuance of Amendment to Facility

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

The amendment, in accordance with the licensee's application for amendment dated December 22, 1989, revises the Maine Yankee Technical Specifications with respect to §5.12, High Radiation Area. The application addresses the administrative controls for locked high radiation area access and provides clarification for determining the high radiation area dose value.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 12, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a part in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to interve is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register Notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritsher, Esquire, Ropes and Gray, 255 Franklin Street, Boston, Massachusetts 02210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 22, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated: January 1, 1990.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-2939 Filed 2-7-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Access to Private Bonding Markets

AGENCY: Office of Federal Procurement Policy (OFPP).

ACTION: Solicitation of public comments and suggestions to improve access to private bonding markets for Federal construction contractors.

SUMMARY: 41 U.S.C. 413 authorizes the Administrator of OFPP to develop innovative procurement methods and procedures to be tested by selected executive agencies. Pursuant to this authority and in response to concerns that promulgation of revised Federal Acquisition Regulations (FAR Case 88-57) tightening collateral requirements for

individual sureties may adversely affect access to bonding, and therefore to government construction contracts, OFPP is seeking suggestions on steps that might be taken to make bonding more available, including alternatives to the existing system, that will afford adequate protection to the Government and all private sector participants. Small contractors have for many years expressed concerns relating to the unavailability of surety bonds. Disadvantaged small business concerns, emerging firms, and fast-growing firms have reported particular problems in obtaining adequate surety bonding.

COMMENT DATE: Comments must be received on or before March 12, 1990.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Carol Dennis, Deputy Associate Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Room 9001, New Executive Office Building, Washington, DC 20503. Information or questions may be addressed to Ms. Dennis (202) 395–6810.

SUPPLEMENTARY INFORMATION: The Miller Act (40 U.S.C. 270a–270d) requires that for any Federal construction contract greater than $25,000 contractors must post two types of bonds: performance bonds and payment bonds. The principal purpose of the performance bond is to protect the Government. It guarantees that the contractor will complete the work or, if not, the Government will be indemnified for the value of the uncompleted work.

The principal purpose of the payment bond is to protect subcontractors, suppliers and employees. The payment bond is intended to guarantee that the contractor's subcontractor's, suppliers, and employees will be paid since they are prohibited from filing liens against public property.

Bond for Federal construction contracts are underwritten by both corporate sureties and individual sureties.

Corporate surety

A corporate surety bond is underwritten by a corporation licensed and regulated pursuant to the insurance laws of the various States. Corporate surety bonding companies are the principal source of surety bonding for both public and private construction contracts. In order to provide bonds for Federal construction contracts, corporate sureties must make application to the Treasury Department for inclusion on the Treasury list of approved corporate surety firms. The corporate surety's decision to issue bonds to a contractor is made on the basis of its own underwriting standards but can not exceed the limits set by the Treasury Department.

Individual surety

In addition to bonds provided by corporate sureties, bonding need of firms interested in competing for Federal construction contracts can also be met by persons acting as individual sureties. While no Government-wide data are available, the use of individual sureties reportedly has increased during the later part of the 1980's, fulfilling bonding needs not met by the corporate surety market. Individual sureties are not regulated by state insurance departments nor approved by the Treasury Department. Under current requirements of the FAR, a contractor may meet its bonding requirements by offering the bonds of two individual sureties, each of whom pledges to be personally liable for the penal sum of the bond. Verification of the assets listed on the prescribed bond form is left to the Government's contracting officers.

According to a recently issued General Accounting Office report, increasing numbers of abuses relating to the use of individual sureties are under investigation by the various procuring agencies and by the Department of Justice. Many abuses center on fraudulent listing of unowned assets, substantial over-valuation of assets listed, or listing of the same assets on multiple individual surety bonds.

FAR

To prevent similar abuses in the future, changes to the FAR relating to individual sureties were developed and published for public comment on November 3, 1988. After careful consideration of the more than 400 comments received, a final rule was promulgated on November 28, 1989. This rule becomes effective on February 26, 1990. In essence, these new regulations require an individual surety to pledge specific assets to assure fulfillment of the surety's obligations. These assets may be secured to the government by placing them in an escrow account established in a Federally-insured financial institution, or by the filing of a lien if the assets are real property.

Assets acceptable for deposit in an escrow account include cash, Certificates of Deposit, Government securities, stocks and bonds listed and actively traded on major exchanges at 90 percent of their 52 week low, and irrevocable letters of credit.

When real property is pledged, it must be located in the United States or its possessions. Such property will be valued at 100 percent of its current tax assessment on its unencumbered value, or 75 percent of its unencumbered value based on an acceptable appraisal. A title certificate is required and a lien in favor of the U.S. Government must be recorded.

Assets not acceptable under the revised FAR provision include: real property located outside the United States; the principal residence of the surety; life estates and leasehold interests; corporate assets; and speculative assets such as mineral rights, art, antiques, jewelry, and furs.

Small Business Administration (SBA)

The Small Business Administration (SBA) administers a surety bond guarantee (SBG) program to assist small businesses in obtaining bonds for a variety of purposes including bonds to satisfy Miller Act requirements.

Under the authority of the Small Business Act, SBA guarantees generally up to 80 percent of a surety firm's loss. To be eligible for the SBA SBG program, and small business concern cannot exceed a size standard of $3.5 million in average annual gross receipts during the prior three years. The face value of a contract eligible for a guarantee cannot exceed $1.25 million. In FY 89 the SBA guaranteed 11,230 final bonds in the aggregate contract amount of $1.39 billion. The average contract amount was about $124,000.

Under recent amendments to the SBA SBG program made by Title II of Public Law 100–590, 90 percent guarantees are available for contracts of $100,00 or less, and for bonds issued to minority business concerns. The objective of these amendments was to expand access to bonding for disadvantaged small business concerns and for emerging construction firms seeking bonding for smaller, entry-level projects. These new 90 percent guarantees became effective on May 2, 1989, and their use is expected to increase during FY 90.

The same amendments to the Small Business Act also authorized a three-year test of a Preferred Surety Bond Guarantee Program within the overall SBA SBG Program with a 70% SBA guarantee. The objective of these amendments was to encourage renewed participation in surety bonding by standard surety firms, with the expectation that they would concentrate on meeting the bonding needs of disadvantaged small business concerns. Interim final regulations implementing the Preferred SBG Program were published in revised form on November 9, 1989.

Department of Transportation (DOT)

The Department of Transportation (DOT) has a bonding assistance program for disadvantaged business enterprises (DBE) doing business with DOT and agencies receiving funds from DOT. DOT guarantees 80 percent of the bond amount. The surety firm must be on the Treasury list of approved corporate sureties. The face value of a contract eligible for a guarantee cannot exceed $500,000. In FY 89, plus the first two months of FY 90, DOT guaranteed 8 bonds for a total of $882,576. The average bond amount was $110,000. In FY 90 DOT has $9.6 million dollars available for guarantees. Considering the 20 percent risk assumed by the participating sureties, the total program capacity equals $12 million. DOT also provides a bonding readiness letter to a potential DBE contractor in advance of specific contract. At the time a contractor actually bids on a contract, the contractor contacts DOT again and DOT revises and updates the bond readiness letter, which is then sent to a participating surety.

Bond waiver

As another method of further addressing the bonding access problem, a test of surety bond waivers has been authorized. Section 301 of Public Law 100–656, the "Business Opportunity Development Reform Act of 1988", authorized a three year test permitting the waiver of Miller Act bonding requirements for certain participants in the SBA's Minority Small Business and Capital Ownership Development (MSB/COD) Program, more commonly referred to as the SBA 8(a) Program. To assure adequate protection of subcontractors and suppliers to an 8(a) contractor granted a surety bond waiver, the amendments specify alternative payment protections. As a condition to the exercise of the bond waiver authority, provision must be made for the direct disbursement of funds due subcontractors and suppliers of the 8(a) prime contractor (after being certified as earned by the prime contractor and being approved by the agency as payable).

More recently, Section 833 of Public Law 101–189, the "National Defense Authorization Act of Fiscal Years 1990 and 1991", requires the Department of Defense to make every reasonable effort to award not less than 30 construction contracts in each of the fiscal years 1990 and 1991 to firms participating in the MSB/COD Program who have been accorded a waiver of surety bond requirements pursuant to the test authority previously authorized by Public Law 100–656. The stated objective of this provision is to obtain a substantial test of the new bond waiver authority.

Summary

OFPP is interested in receiving suggestions or proposals to improve access, particularly for small business concerns and disadvantaged small business concerns, to adequate bonding to permit participation of otherwise qualified firms in the Federal procurement process. Suggestions are solicited regarding modifications to existing bonding assistance programs, new approaches to providing access to bonding, or alternatives to present bonding requirements.

Given concerns expressed about the potential adverse impact of the new FAR coverage relating to the use of individual sureties, OFPP is also interested in receiving information on the extent of individual surety usage and problems encountered by procuring agencies of the construction contracting community.

We need to ensure that persons and firms capable of performing on Government contracts have the opportunity to bid on such contracts.

Dated: January 20, 1990.

Allan V. Burman,

Administrator Designate.

[FR Doc. 90–2933 Filed 2–7–90; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the Accelerated Tariff Elimination Provision in the United States-Canada Free-Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a change in the procedure for filing petitions for accelerated tariff elimination under the United States-Canada Free-Trade Agreement ("FTA").

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to the consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice modifies the procedure for filing petitions requesting accelerated tariff elimination.

FOR FURTHER INFORMATION CONTACT: Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street NW., Washington, DC 20506, Mr. Russell La Mantia, telephone (202) 395–5663.

Background

A procedure for filing petitions for accelerated tariff elimination under the FTA was set forth in a **Federal Register** notice of January 23, 1988, Volume 54, Number 13, at pages 3175 and 3176.

By notice in the **Federal Register** on December 28, 1989 (Volume 54, Number 248 at pages 53404 and 53405), the period for filing petitions for the 1990 petition cycle was changed to open on January 1, 1990, and to close on April 1, 1990.

Based upon experience gained in the 1989 petition cycle, this notice further modifies the procedure which was established in the notice of January 23, 1989, for filing petitions.

I. Format of Petitions

A standardized petition format, which will facilitate processing and review, and the elements of information to be contained in a petition, are shown in the annex to this notice. In order to be considered, petitions for accelerated tariff reductions must conform to the standard format and contain all essential data elements.

Data elements 1 through 12 listed in sections A and B of the petition format are essential. Petitioners should also provide as much of the information requested in section C of the format as is available to them.

If a submission contains business confidential material, the specific material must be so identified in order to receive confidential treatment. In such cases, both a non-confidential and a business confidential version of the petition must be submitted and clearly marked. None of the information provided in sections A and B of the petition may be designated business confidential.

A copy of the petition format and this notice may be obtained from the Office of North American Affairs, Office of the U.S. Trade Representative (USTR), Room 501, 600 17th Street NW., Washington, DC 20506, telephone (202) 395–5663.

II. General Instructions

1. *One product per petition.* Each petition may request accelerated tariff elimination for a single product only. For this purpose, "single product" means an 8-digit tariff subheading or, if the petitioner is not requesting acceleration of an entire 8-digit tariff subheading, a

single specified product within an 8-digit tariff subheading. All information contained in a petition must pertain solely to the single product that is the subject of the petition.

2. *Petitioner/product relationship* (data element 5). At least one item in data element 5 must be checked. If either item "e" or "j" is checked, specify the relationship or interest that the petitioner has in the product.

3. *Product description* (data element 6). Petitions for acceleration of an entire 8-digit tariff subheading must provide at least a general description sufficient to identify the product coverage of the 8-digit subheading. Petitions for acceleration of a single product within an 8-digit subheading must provide: (a) A sufficiently detailed and accurate description of the product to permit USTR to verify the tariff classification of the product, and (b) a statement of the basis for the petitioner's identification of the 8-digit tariff subheading/s in data element 7 (e.g., official U.S. or Canadian customs practice or ruling). Brand names or trademarks are not acceptable as product descriptions for this purpose and their use will result in rejection of the petition.

4. *8-digit tariff subheadings* (data element 7). Petitions for acceleration of tariff elimination under both the U.S. and Canadian tariff schedules must provide the correct applicable 8-digit tariff subheading number for each of the two tariff schedules. If acceleration is requested under only one of the tariff schedules, the appropriate tariff schedule must be identified and the applicable 8-digit subheading in that schedule must be provided and, if known, should also be provided for the other schedule. Not more than one 8-digit subheading in each tariff schedule may be listed in a petition.

5. *Supplemental information* (Section D). This section of the petition should be used to provide additional information supplementing that provided in data elements 1 through 17 (please specify the relevant data element(s) being supplemented), or any other relevant information that may assist USTR in the consideration of the petition.

6. *Submission of petitions.* Petitions should be type-written and submitted in 10 copies to: Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street NW., Washington, DC 20506, ATTN: Mr. Russell La Mantia. For consideration during the 1990 petition cycle, petitions must be received not later than April 1, 1990.

III. Consideration of Petitions

USTR will review all petitions received by April 1, 1990, and decide which tariff items will be presented to the Government of Canada for possible accelerated tariff reductions. USTR reserves the right to reject petitions not meeting the criteria set forth below.

USTR will not consider any petition unless it provides complete and accurate information, particularly with respect to data elements 1 through 12 in sections A and B of the petition. USTR will require particular precision in responses to data element 6 (product description) in petitions requesting acceleration on a specified product within an 8-digit tariff subheading. USTR generally will not act on a petition unless most U.S. producers of that particular product consider the request for acceleration to be non-controversial. In cases where the product was the subject of a petition in the 1989 petition cycle, the petitioner must demonstrate significantly changed circumstances. In the absence of a demonstration of significantly changed circumstances, USTR will not act on petitions for the acceleration of the tariff elimination on products that were considered in the 1989 petition cycle. The list of such products is contained in the **Federal Register** notice of July 17, 1989, Volume 54, Number 135, at pages 29959 through 29971.

Normally, the acceleration of the elimination of tariffs will be pursued on a reciprocal basis. Petitions containing requests for the accelerated elimination of Canadian tariffs will be treated as applying equally to the corresponding U.S. tariff item, and vice versa.

Petitions to the Government of Canada

Information on the procedures for submitting requests to the Government of Canada is available from the Interdepartmental Committee on FTA Acceleration, Lester B. Pearson Building, Tower C, Floor 3, Room 106, 125 Sussex Drive, Ottawa, Ontario, Canada K1A 0G2.

Name of Signer: Charles E. Roh, Jr.
Title of Signer: Assistant U.S. Trade Representative for North American Affairs.

Annex

Petition to Accelerate the Removal of Tariffs Under the United States-Canada Free-Trade Agreement

Section A. Petitioner Identification

1. Petitioner: _____
2. Address: _____
3. Contact person: _____
4. Telephone number: _____
5. Petitioner/product relationship:
   a. ____Producer in the United States
   b. ____Importer in the United States
   c. ____Exporter in the United States
   d. ____Consumer in the United States
   e. ____Other, in the United States
   Specify: _____
   f. ____Producer in Canada
   g. ____Importer in Canada
   h. ____Exporter in Canada
   i. ____Consumer in Canada
   j. ____Other, in Canada
   Specify: _____

Section B. Product Identification and Tariff Information

6. Product description: _____
_____
_____
(Supplement in Section D if necessary)
7. The product is classified in the following 8-digit tariff subheading:
   a. ____in the Harmonized Tariff Schedule of the United States (1990 edition)
   b. ____in the Customs Tariff of Canada
8. This petition:
   a. ____covers all products in the U.S. 8-digit tariff subheading.
   b. ____does *not* cover all products in the U.S. 8-digit tariff subheading.
   c. ____covers all products in the Canadian 8-digit tariff subheading.
   d. ____does *not* cover all products in the Canadian 8-digit tariff subheading.
9. Under the Free-Trade Agreement, the current rate of duty in the tariff schedule of:
   a. the United States is _____.
   b. Canada is _____.
10. Duty elimination under the Free-Trade Agreement is currently scheduled for:
   a. the United States effective [_____ January 1, 1993] [_____ January 1, 1998] [_____Other. Specify date: _____].
   b. Canada effective [_____ January 1, 1993] [_____ January 1, 1998] [____ Other. Specify date: ____].
11. Accelerated removal is requested for:
   a. ____the United States duty
   b. ____the Canadian duty
12. Petitioner requests elimination of the tariff/s:
   a. ____immediately without further staging.
   b. ____with accelerated staging.
Specify:. _____

Section C. Economic and Statistical Information

13. Exports in 1987–1989 by the petitioner, and projected exports by the petitioner, in the 12-month period following implementation of petitioner's request:

	a. From the United States to Canada		b. From Canada to the United States	
	Quantity	Value	Quantity	Value
1987				
1988				
1989				
Projected:				

14. Imports in 1987–1989 by the petitioner, and projected imports by the petitioner in the 12-month period following implementation of petitioner's request:

	a. From Canada into the United States		b. From the United States into Canada	
	Quantity	Value	Quantity	Value
1987				
1988				
1989				
Projected:				

15. Production by the petitioner:

	a. In the United States		b. In Canada	
	Quantity	Value	Quantity	Value
1987				
1988				
1989				

16. Names and addresses of known principal producers in the United States:

a. _____
b. _____
c. _____

17. Petitioner's 1989 share of the market in:
a. the United States was ____%.
b. Canada was____%.

Section D. Supplemental Information

Signature of person filing the petition: _____
Title or position: _____
Date: _____

[FR Doc. 90–3014 Filed 2–7–90; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27665; File No. SR–Amex– 88–20]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Additional Periods for Delivery of Securities

On August 26, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 124 to provide for additional periods for delivery of securities following trade date, including delivery on the first, second, third, and fourth days after trade date.

The proposed rule change was noticed and partial accelerated approval of the proposal relating to next day delivery was granted in Securities Exchange Act Release No. 26127 (September 29, 1988), 53 FR 39388 (October 6, 1988). No comments were received on the proposal.

The Exchange proposes to amend Amex Rule 124 to provide for additional settlement periods as the Exchange may from time to time determine.[3] Initially, the Amex has proposed to provide additional periods for delivery of securities following trade date ("T") for the second, third, and fourth days after the trade date on an eighteen month pilot basis.[4] The Exchange has implemented enhancements to its system to accommodate trades subject to T+2 through T+4 settlement. The Exchange does not anticipate that additional settlement periods will impose additional burdens on member firm chearance and settlement procedures. The Exchange, however, will monitor the operation of the proposed alternate delivery periods and assess any effects of such timeframes on member firm settlement procedures.

The Exchange believes that additional delivery periods will afford its members greater flexibility in structuring investment strategies and advancing the investment objectives of members' customers. The Commission previously approved an Amex proposed rule change relating to delivery of securities on the first day after trade date.[5] The Commission has approved next day delivery or delivery on the second, third, and fourth days after trade date for trades on the New York Stock Exchange ("NYSE"), the Midwest Stock Exchange ("MSE"), and the Boston Stock Exchange ("BSE").[6] The Amex states that permitting additional settlement periods for transactions effected on the Amex will reduce the disparity that exists among exchanges with respect to securities delivery requirements.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act,[7] in that they are designed to protect the public interest. This rule change will permit Amex member firms to accommodate the needs of their customers with respect to transactions on the Amex in the same way that they can be accommodated on the NYSE and certain regional exchanges. It will provide market facilities for investors who wish to execute transactions for settlement on time frames shorter than the traditional five day settlement. Moreover, because this proposal provides for an eighteen month pilot program, the Exchange will be in a position to monitor and assess any effects of the alternate delivery periods on member firm settlement procedures. The Exchange has agreed to provide the Commission with quarterly reports including the number and type of trades subject to T+1 through T+4 settlement.[8] These quarterly reports will facilitate the Commission's continued monitoring of expedited settlement feature.[9]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change referenced above be, and hereby is, approved for an eighteen month period ending on August 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: February 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–2859 Filed 2–7–90; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Currently, most securities transactions executed on a national securities exchange are settled on the fifth business day following the trade date.

[4] *See* letter from Michael Cavalier, Assistant General Counsel, Amex, to Mary Revell, Branch Chief, Exchange Regulation, Division of Market Regulation, SEC, dated January 3, 1990.

[5] *See* Securities Exchange Act Release No. 26127 (September 29, 1988), 53 39388 (October 6, 1988).

[6] *See* Securities Exchange Act Release No. 24161 (March 2, 1987), 52 FR 7350 (March 10, 1987).

[7] 15 U.S.C. 78f (1982).

[8] *See* letter from Michael Cavalier, Assistant General Counsel, Amex, to Sharon Itkin, Attorney, Division of Market Regulation, SEC, dated September 28, 1988.

[9] During the first six months of 1989, Amex members executed 275 next-day trades on the exchange, representing 1,745,610 shares. *See* letter from Michael Cavalier, Assistant General Counsel, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated July 12, 1989.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. 34-27663; File No. SR-ISCC-89-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by International Securities Clearing Corporation Regarding ISCC's fees

January 31, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(1), notice is hereby given that on January 2, 1990, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-ISCC-89-03), as described in Items I, II, and III below, which Items have been prepared by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is attached hereto as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC 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. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule filing is to establish a CPU access fee (which fee is applicable whether the Member transmits via a CPU or PC) and to delineate the fees charged to Members who use ISCC's data transmission link with CEDEL for non-Portal transactions.

ISCC Members who transmit data to CEDEL, exclusive of Portal transactions, are charged $.50 per instruction submitted to CEDEL. ISCC will pass through to each ISCC participant who has a Global Compass terminal the CPU access fees which ISCC incurs per month for each such terminal. Effective January 2, the pass through charge will be $125.00 per Member per terminal.

(b) The proposed rule change will establish an equitable allocation of fees charged to Members of ISCC and it is therefore, consistent with the requirements of the Act, as amended, and the rules and regulations thereunder applicable to ISCC, specifically section 17A(b)(3)(D).

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act because it concerns a fee change. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 Section, 450 Fifth Street NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to File No. SR-ISCC-89-03 and should be submitted by March 1, 1990.

For the Commission, by the Division of Market Regulation pursuant to delegated authority (17 CFR 200.30-3(a)(12)).

Jonathan G. Katz,

Secretary.

Exhibit A

Modify ISCC's Fee Structure as follows:

Italics indicates addition
[Brackets] indicates deletion

International Securities Clearing Corporation Fee Structure

I. Trade Processing Fee
$5.00 per compared side for trade comparison, recording and clearance of international trades.

II. ISCC London Depository Receive Fee
$1.00 per plus the pass-through allocation of Brink's expenses for deposit of items to DTC made in London. Under instructions, ISCC will accept the deposit of securities for same-day and next-day credit.

III. ISCC Courier Eastbound Handling
$.75 per envelope plus the mutualized pass-through of shipping costs of the International Document/Securities Exchange Service.

IV *CEDEL Instruction Fees* [1]
$.50 per instruction submitted

[IV] *V.* Pass-Through and Other Fees
A. Participant Fee—a $300 per month fee per member for participation in ISCC.
B. DTC Sponsored Accounts—Pass-through of the DTC.

Monthly Invoice assessed the Sponsored Account plus a 20% management fee. Available to each participant who is not also a participant of DTC.

C. Pass-Through Expenses

1. Communications—the costs of special communications services requested by participants will be rebilled at cost to the requesting participant.

2. Other Direct Expenses—such as forms purchased through ISCC will be rebilled to participant at cost.

3. CPU Access (includes PC's)

[3] *4.* Miscellaneous Expenses—any other expenses not specified above which ISCC may incur on behalf of a member at a member's request will be passed-through.

[4] *5.* All normal billings from NSCC, DTC or such other Eligible Organization(s) will be passed directly back to the participant.

[FR Doc. 90-2860 Filed 2-7-90; 8:45 am]
BILLING CODE 8010-01-M

[1] This fee is not applicable to PORTAL transactions.

[Rel. No. 34-27669; SR-PSE-89-17]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Options Facilitation Orders and the Solicitation of Options Facilitation Orders

On June 8, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its rules governing facilitation orders and establish procedures relating to the solicitation of options facilitation order outside the trading crowd.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26973 (June 26, 1989) 54 FR 28538. No comments were received on the proposed rule change.

The PSE is proposing to amend its rules concerning options facilitation orders.[4] Under current PSE rules, a facilitation order can only be used in crosses between an order of a public customer and an order for the proprietary account of the customer's member organization. Under the proposal, the definition of facilitation will be expanded to permit member organizations to facilitate public customer orders by crossing them with other types of orders in addition to orders from the proprietary account of the customer's member firm. These other orders would include any orders of the member firm, other customer orders, as well as orders from other members and member firms. According to the PSE, by expanding the type of facilitation orders, the proposal would benefit the public by enabling public customers to receive executions on orders which may not have been otherwise executable.

The proposal also would require that any order transmitted to the PSE floor for the purpose of facilitating a public customer order must be clearly designated as a facilitation order. Further, the PSE is proposing to clarify the language in section 63 of the PSE's facilitation rules. Under the existing language, the rule states that a public customer order subject to facilitation has precedence over any bid or offer in the crowd at the same price to trade immediately with the facilitation order. The words "at the same price" would be deleted to make it clear that market participants are not given a second opportunity to make a quotation which could block the customer side of the order by changing the established market. The PSE, however, has added language to its rule to claify that persons in the trading crowd would not be precluded from accepting the customer's bid or offer or providing the customer with an improved execution.

The PSE is also proposing to permit the solicitation of facilitation orders outside the trading crowd under certain circumstances. Under this part of the proposal, solicitation of buying or selling interest for the opposite side of a public customer order would be permitted in the event the response of the trading crowd has been insufficient to fill the order.

The solicited order would be entitled to priority of execution with the order prompting the solicitation, provided certain criteria are met. First, the order must be initially announced in the trading crowd by public outcry, disclosing the size and all components of the order. Second, the order must remain active in the trading crowd throughout the solicitation process so that market participants have a continous opportunity to trade with all or any part of the order throughout the entire solicitation process.[5] Third, the prevailing bid/ask quotation on the underlying security must remain unchanged from the time the initial order was first represented at the trading post until the consummation of the transaction. Finally, all solicited orders must be so marked on the order ticket. If the solicited order is for a market maker account, the solicited market marker must initial the order ticket and keep a copy of it in his possession at all times such order is active.[6]

The PSE believes the conditions for soliciting an order will allow for enhanced depth and liquidity, without detracting from or compromising the auction marketplace and should provide for more competitive markets and executions at the best available price.

The Commission has carefully reviewed the proposed rule change and has concluded that the changes are appropriate and consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.

Specifically, by expanding facilitation orders to include crosses of public customer orders with any type of order, it will be easier to execute public customers orders. Moreover, the proposed facilitation rules will ensure that the facilitated order receives the best available price, yet be capable of a quick, whole execution.[7] In addition, the other changes to the facilitation rules discussed above would eliminate any ambiguity about whether market participants, after they have already been given an opportunity to accept the bid for offer made on behalf of the public customer's facilitated order, can break up the facilitated order by changing the established market prior to execution of the facilitation order. The proposed rule change clarifies that they can not do so.[8]

The Commission also believes that the rules and procedures established for soliciting options orders outside the trading crowed is consistent with investor protection and just and equitable principles of trade.[9] The rules

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[1] 15 U.S.C. Sec. 78s(b)(1) (1982).

[2] 17 CFR Sec. 240.19b-4 (1989).

[3] On October 4, 1989, the PSE submitted Amendment No. 1 to its filing in response to Commission staff comments. For the most part, the amendments are not substantive and are intended to clarify certain aspects of the proposal as originally submitted. This order approves the proposal as amended. *See* letter to Sharon M. Lawson, Special Counsel, Division of Market Regulation, Commission, from Laura Cleveland, Compliance Investigator, PSE, dated October 3, 1989.

[4] Under current PSE Rule VI, section 57 a facilitation order is defined as an order for the proprietary account of a member organization that is only to be executed in whole or in part in a cross transaction with an order for a public customer of the member organization. Under the current facilitation procedures set forth in PSE Rule VI, section 63, market participants must be given an opportunity to accept the bid or offer made on behalf of the public customer; if not accepted then the order subject to facilitation has precedence over an other bid or offer in the crowd at the same price to trade immediately with the facilitation order.

[5] Under existing PSE options facilitation rules, the floor broker must allow members in the trading crowd a reasonable period of time to respond to a request for a market and the bids or orders made prior to consummating the cross transaction. *See* PSE Rule VI, section 63, Commentary .05.

[6] As originally proposed, the new solicitation rule would require that the solicited order be executed as a cross transaction by a member affiliated with the member organization that had initially represented the order prompting the solicitation. The PSE deleted this requirement in Amendment No. 1.

[7] *See* Securities Exchange Act Release No. 22691 (December 5, 1985), 50 FR 50681 and Securities Exchange Act Release No. 22273 (July 29, 1985), 50 FR 31449 in which the Commission approved similar rule changes by the American Stock Exchange ("Amex") and Chicago Board Options Exchange ("CBOE") to expand the type of orders that members could use to facilitate a public customer options order.

[8] *See* similar rule changes approved by the Commission for Amex, CBOE and the New York Stock Exchange in Securities Exchange Act Release Nos. 22691 (December 5, 1985), 50 FR 50681, 22273 (July 29, 1985) 50 FR 31449 and 27345, (October 6, 1989), 54 FR 42612, respectively.

[9] *See* Securities Exchange Act Release No. 26947 (June 19, 1989), 54 FR 26869 approving an Amex

Continued

are intended to provide members with the ability to seek supplemental sources for an order execution if the trading crowd liquidity proves insufficient. At the same time, the rules have been designed to ensure the trading crowd has an opportunity to participate in a transaction on the same terms as any solicited party throughout the solicitation process and will thereby, in the Commission's view, maintain the integrity of the marketplace. Affording members of the trading crowd the opportunity to participate in all transactions, including solicited orders, ensures that customer orders will receive the best available price. Further, the rule will allow the Exchange to regulate and monitor solicited transactions to ensure that the trading crowd always has the opportunity to participate in such transactions.

In reviewing the proposal, the Commission examined whether the PSE could adequately surveil and monitor for certain abusive trading practices such as prearranged trading. The execution of a prearranged trade does not expose the transaction to the market forces designed to protect the integrity of the individual order and the marketplace. As described above, the proposal requires all solicited order tickets to be so marked, with special initialling and maintenance requirements if the solicited order is for a market maker account. The Commission believes that these requirements, the proposed procedures for exposing the solicited order to the trading crowd, and the PSE's surveillance procedures should enable the PSE to effectively monitor transactions involving solicitation outside the trading crowd and should strengthen its ability to detect and deter trading abuses.

Based on the above, the Commission believes the proposed rule change is consistent with section 6(b)(5) of the Act by, among other things, facilitating transactions in securities, promoting just and equitable principles of trade and protecting investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

proposed rule change (SR-Amex-88-28) setting guidelines for the solicitation of members outside the trading crowd for participation in an options transaction.

[10] 15 U.S.C. Sec. 78s(b)(2) (1982).

[11] 17 CFR Sec. 200.30-3(a)(2) (1989).

Dated: February 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2861 Filed 2-7-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-25032]

Filings Under Public Utility Holding Company Act of 1935 ("Act")

February 2, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 26, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation, et al. (70-7643)

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, a registered holding company, and five of its subsidiaries, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403, Public Service Company of Oklahoma, P.O. Box 201, Tulsa, Oklahoma 74102, Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156, West Texas Utilities Company, P.O. Box 841, Abilene, Texas 79604, and Transok, Inc., P.O. Box 3008, Tulsa, Oklahoma 74101 and CSW's service company subsidiary, Central and South West Services, Inc. ("CSWS"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, (collectively, "Subsidiaries") have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By prior Commission orders, CSW and its Subsidiaries were authorized to amend and continue through March 31, 1991 their short-term borrowing program (HCAR Nos. 24855 and 24966, April 5, 1989 and October 10, 1989, respectively). The borrowing program is coordinated through the use of the CSW system money pool ("Money Pool"), as the primary lender, but allows for CSW and the Subsidiaries to borrow from banks under certain circumstances. The program makes funds available to the Subsidiaries for interim financing of their capital expenditure programs and their other working capital needs, and to repay previous borrowings incurred for such purposes. Funds for the Money Pool are made available from surplus funds from the treasuries of CSW and its operating subsidiaries, from proceeds from the sale of commercial paper notes by CSW and bank borrowings by CSW and the Subsidiaries.

The maximum borrowing level authorized for CSWS was $25 million, and it is now proposed to increase that authorization to $35 million, on the same terms and conditions. In all other respects this filing will remain as previously ordered.

Northeast Utilities, et al. (70-7695)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, and Northeast Utilities Service Company ("NUSCO"), 107 Selden Street, Berlin, Connecticut 06037-0218, a service company subsidiary of Northeast, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), 13(b) and 13(f) of the Act and Rules 26, 43, 45, 50, 50(a)(5), 80 and 90 thereunder.

Proposal

Northeast proposes to acquire Public Service Company of New Hampshire ("PSNH"), a New Hampshire corporation and a publicly owned electric utility, which filed a voluntary petition for protection from its creditiors under Chapter 11 of the United States Bankruptcy Code, as amended ("Bankruptcy Code"), on January 28, 1988. PSNH is currently a debtor-in-possession in bankruptcy reorganization proceedings pending in the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court"). Northeast's proposed acquisition of

PSNH will be implemented pursuant to a Joint Plan of Reorganization ("Plan") proposed jointly by NUSCO, PSNH, the Official Committee of Unsecured Creditors of PSNH and the Official Committee of Equity Security Holders of PSNH ("Official Committees") appointed in the bankruptcy proceeding and the holders of a majority of PSNH's third mortgage bonds ("Bondholders").

The Plan provides, among other things, for: (1) The acquisition of all of PSNH's common stock; (2) the transfer of PSNH's 35.6% ownership interest in the Seabrook Nuclear Power Project ("Seabrook"),[1] located in Seabrook, New Hampshire, to the to-be-formed North Atlantic Energy Corporation ("North Atlantic"),[2] a company that will be a wholly-owned subsidiary company of Northeast; (3) the formation of Northeast Utilities Operating Company ("NUOP") as a wholly owned subsidiary company of Northeast that will assume responsibility for the operation of Unit No. 1; [3] (4) the issuance by Northeast, PSNH and North Atlantic of certain securities in connection with the Plan; and (5) certain related transactions. Under the Plan, Northeast proposes to acquire PSNH in either a one- or two-step transaction.

One-Step Transaction

Northeast would acquire PSNH in a one-step transaction if the Plan is confirmed by the Bankruptcy Court and all conditions to the acquisition are satisfied by August 1, 1990, the date on which the first step of the two-step transaction would occur ("Reorganization Effective Date"), unless otherwise extended.

The Plan places an aggregate valuation on PSNH of approximately $2.3 billion (assuming Seabrook meets specified licensing and operating requirements), which is the amount to be made available for distribution to PSNH's creditors and shareholders in the bankruptcy proceeding. Under the Plan, the non-Seabrook assets would be valued at approximately $1.6 billion, and Seabrook, which is currently reflected on PSNH's balance sheet at approximately $1.8 billion, would be valued for purposes of the transfer at approximately $700 million. Of the $2.3 billion amount, approximately $789 million will be treated for ratemaking purposes as a "premium" for the non-Seabrook assets of PSNH. The premium would be recovered from PSNH's ratepayers pursuant to a rate agreement entered into between Northeast and New Hampshire.

The Plan further provides that all currently issued and outstanding PSNH securities will be cancelled, with some possible exceptions. Two series of PSNH pollution control bonds may remain outstanding: (1) $100 million aggregate principal amount of The Industrial Development Authority of the State of New Hampshire Pollution Control Revenue Bonds, 1986 Series A ("1986 PCRB"); and (2) $112.5 million aggregate principal amount of The Industrial Development Authority of the State of New Hampshire Adjustable Rate Solid Waste Disposal and Pollution Control Revenue Bonds, 1989 Series ("1989 PCRB") (Collectively, "PCRBs"). If either or both series of PCRBs remain outstanding, the two indentures under which the bonds were issued will be amended at the time of PSNH's acquisition by supplemental indentures. The supplemental indentures will provide for the substitution of the 1986 PCRBs and 1989 PCRBs with new issues of first mortgage bonds in the aggregate principal amounts of $100 million and $112.5 million, respectively, as security for the existing 1986 PCRBs and 1989 PCRBs. In addition, certain covenants contained in the two PCRB indentures may be modified.

Under the one-step transaction, Northeast will acquire all of PSNH's common stock concurrently with the cancellation of all of the outstanding PSNH preferred and common stock. The transfer of PSNH's interest in Seabrook will be effected through a cash sale from PSNH to North Atlantic. PSNH creditors and PSNH equity security holders will receive approximately $2.105 billion in cash.[4] In addition, PSNH equity security holders will receive up to $205 million principal amount of North Atlantic's contingent notes ("Contingent Notes"), which will be issued under an indenture in three series: Series A, $82 million; Series B, $82 million; and Series C, up to $41 million. Each Series of Contingent Notes will mature on July 1, 2000, and will bear interest at a rate ("Investment Percentage") to be determined 30 days before the Reorganization Effective Date. The Investment Percentage is calculated by adding 175 basis points plus a "Coupon Adder" of 400 basis points to the average yield of a group of seven currently outstanding utility mortgage bond issues. The Coupon Adder will vary so that a constant net present value of the Contingent Notes is maintained if the yield to maturity of the seven bond issues is greater or less than expected. The Contingent Notes will be noncallable until July 1, 1995, and redeemable thereafter at a premium. North Atlantic's obligation to pay each series will be contingent on the satisfaction of certain conditions with regard to Seabrook Unit No. 1's licensing and operation within five years from the Reorganization Effective Date, after which date the notes will be of no further force or effect.

PSNH equity security holders will also receive, and Northeast will issue, approximately 8,431,000 warrants ("Northeast Warrants") to buy Northeast common stock. One Northeast Warrant will be issued for every five shares of PSNH common stock that are outstanding immediately before the Reorganization Effective Date, and will entitle the holder thereof during the exercise period [5] to purchase for cash one share of Northeast common stock, to be issued and sold by Northeast for $24.00 per share, subject to certain adjustments. The Northeast Warrants will be freely transferable by the holders. Accordingly, Northeast requests authorization to issue up to 8,431,000 Northeast Warrants and to issue and sell up to 8,431,000 shares of its common stock on the exercise by the holders of the Northeast Warrants.

The Plan provides that PSNH will become a wholly owned subsidiary company of Northeast ("New PSNH") and will have no further obligation to PSNH's debt or equity security holders, except to holders of Pollution Control Bonds, if such bonds remain

[1] Seabrook is a two unit ("Unit No. 1" and "Unit No. 2") nuclear fueled power plant that is jointly owned by 12 electric utilities ("Joint Owners") in New England. Unit No. 1 has been constructed but has not received its full power operating license from the Nuclear Regulatory Commission ("NRC"). Responsibility for the completion of construction, licensing and pre-operational testing and maintenance of Unit No. 1 has been delegated by the Joint Owners to PSNH's New Hampshire Yankee Division. Unit No. 2 has been cancelled.

[2] North Atlantic would enter into a power contract to sell its share of the power generated by Unit No. 1 to PSNH after it is acquired by Northeast on terms that would allow North Atlantic to recover its investment in Seabrook.

[3] The Plan provides that NUOP will assume operating responsibility for Unit No. 1 under an agreement with the Joint Owners after Unit No. 1 receives it full power operating license from the NRC and Northeast's acquisition of PSNH is completed. NUOP will assume the obligations and liabilities of New Hampshire Yankee, the employees of which will be transferred to NUOP. The organization of, and any related issue of securities by, NUOP would be subject to a future application with the Commission.

[4] The approximately $2.105 billion cash distributions will require the issuance of securities producing net proceeds of approximately $2.112 billion because of approximately $7 million of transfer tax. The amount of cash will be reduced if and to the extent that Northeast elects to leave the $212.5 million of PSNH PCRBs' outstanding.

[5] The exercise period for the Northeast Warrants will begin on the date issued, which will be the date Northeast acquires PSNH, and will terminate five years later.

outstanding. New PSNH will initially have 100 million authorized share of common stock, $1.00 par value. New PSNH will issue and sell: (1) all of its issued and outstanding shares of common stock to Northeast for a cash purchase price of approximately $460 million if the transfer by PSNH of its interest in Seabrook occurs, or $320 million if it does not; (2) approximately 5.1 million shares of a class of 25 million shares of $25.00 Cumulative Preferred Stock, Series A, $25.00 par value per share, to the public or in a privately negotiated transaction to net approximately $125 million in cash; and (3) first mortgage bonds, issued under the General and Refunding Mortgage Indenture, dated as of August 15, 1978 ("G&R Indenture"), between PSNH and New England Merchants National Bank, Trustee ("New England Merchants"), as amended and restated, or under a new First Mortgage Indenture, secured by a first lien on its ownership interest in non-Seabrook assets, in the approximate amount of $617.5 million. New PSNH first mortgage bonds will have a medium term of five to ten years. Northeast forecasts assume an interest rate of 10¾% per annum and a term of ten years for the New PSNH first mortgage bonds.

New PSNH will borrow its remaining cash requirements, estimated at $322 million, through a term loan facility with a maturity of less than five years.[6] Northeast forecasts assume an interest rate of 9¾% per annum, and that the loans would be repaid in three years. New PSNH will retain one or more banks to organize a banking group to arrange for placement of the term loan facility. In addition, the Plan provides that New PSNH will put in place a revolving credit agreement with a syndicate of commercial banks under which between $100 and $150 million of short-term borrowings can be made available to New PSNH on a revolving basis to meet its working capital obligations. The revolving credit agreement will provide for competitive bids under a "Dutch Auction" basis or, alternatively, at a specified interest rate, which can be the prime rate or a rate tied to prime rate or to a percentage of the certificate of deposit rate, or any other acceptable method. Northeast forecasts assume an interest rate of 9¾% per annum, and that the loans would be repaid in three years.

[6] Northeast states that this amount assumes New PSNH's $100 million and the $112.5 million PCRB issues will remain outstanding. Otherwise, the estimated amount of the first mortgage bond issue or term borrowings would be increased accordingly.

The Plan also provides that, in addition to the issuance of Contingent Notes, North Atlantic will issue and sell up to 1,000 shares of common stock, $1.00 par value per share, to Northeast for a cash purchase price of $140 million. In addition, North Atlantic will issue and sell first mortgage bonds or other long-term debt, unsecured or secured by a first lien on its ownership interest in Seabrook, through private placement or a negotiated underwriting, to realize up to $355 million in cash. The North Atlantic first mortgage bonds will have a medium term maturity, in the range of ten years or less, depending on market conditions. Northeast projections assume an interest rate of 11.5% per annum and a term of ten years for North Atlantic first mortgage bonds.

Further, Northeast and North Atlantic may enter into a Capital Funds Agreement to provide assurance that North Atlantic has the right to draw upon Northeast, subject to certain specified limits and conditions, to assist in meeting its needs.[7] The Plan further provides that North Atlantic will put in place a revolving credit agreement with a syndicate of commercial banks under which $100 million of short-term borrowings can be made available to North Atlantic on a revolving basis to meet its working capital obligations. The terms and conditions of North Atlantic's revolving credit agreement will be the same as those for New PSNH, discussed above.

Northeast states that the precise nature of debt securities to be issued by New PSNH and North Atlantic has not been definitively determined and that the application may be further amended to provide additional details about the financings to be effected to consummate the Plan. Northeast further states that they do not intend to foreclose themselves from proposing, in such amendments, the issuance of other debt securities, secured or unsecured, with or without related interest rate swaps, hedging transactions and/or credit enhancements, so long as those securities accomplish a cost-effective financing of the debt to be incurred to effect the Plan.

Two-Step Transaction

Northeast will acquire PSNH in a two-step transaction if the Plan is confirmed and the conditions to the acquisition are not satisfied by the Reorganization Effective Date. In the first step, PSNH will be reorganized ("Stand-Alone PSNH") under the Bankruptcy Code and will be an independent company conducting all of PSNH's current utility operations and retaining its interest in Seabrook. Stand-Alone PSNH will not be a subsidiary of Northeast and will be bound by a merger agreement ("Merger Agreement") with a newly-created, wholly-owned subsidiary of Northeast, to be named Northeast Utilities Acquisition Corp. ("NUAC"), under which Stand-Alone PSNH will agree to merge NUAC into it when all regulatory approvals and other conditions are satisfied, with Stand-Alone PSNH as the surviving corporation, New PSNH. The Plan provides that NUAC will have 1,000 authorized shares of common stock, $1.00 par value per share, all of which will be issued to and acquired by Northeast for cash prior to Merger.

PSNH's unsecured creditors and its preferred and common stockholders will be issued an estimated 21.2 million and 11.2 million shares, respectively, of Stand-Alone PSNH common stock, for a total common stock issue of approximately 32.4 million shares, valued at approximately $2.105 billion. The holders of Stand-Alone PSNH common stock will be entitled to receive quarterly dividends. PSNH's shareholders will also receive Contingent Certificates [8] to be exchanged for Northeast Warrants,[9] discussed above under the one-step procedure.

In order to fund the cash distribution requirements, Stand-Alone PSNH will also issue and sell: (1) approximately 5.1 million shares of cumulative preferred stock, $25.00 par value, designated as $25.00 Cumulative Preferred Stock, Series A, to the public in amounts that will produce an estimated $125 million in net proceeds; and (2) first mortgage bonds, issued under the G&R Indenture or a new Indenture, as discussed above, secured by a first mortgage lien on its non-Seabrook assets for net proceeds estimated at $612.5 million. Stand-Alone PSNH first mortgage bonds will be issued under the G&R Indenture between PSNH and New England Merchants, or under a new First Mortgage Indenture, as discussed above. In addition, Stand-Alone PSNH will issue $205 million in Contingent Notes, which will have been issued by North

[7] The terms and conditions of the Capital Funds Agreement will be filed by amendment to this application-declaration and will be the subject of a further notice by the Commission.

[8] Stand-Alone PSNH, rather than Northeast, will issue the Contingent Certificates, which will become null and void if the merger does not occur.

[9] In connection with the capitalization of NUAC, Northeast will issue the Northeast Warrants to NUAC immediately prior to the Merger. Under the Merger Agreement, the Northeast Warrants will then be distributed to PSNH's creditors and shareholders.

Atlantic if a one-step approach were used. The balance of Stand-Alone PSNH's cash requirements will be met by a term loan, which is projected by Northeast to be approximately $487 million, of which amount approximately $140 million will be repaid in Step 2.

In the event that Stand-Alone PSNH determines that it is impractical to effect some or all of the contemplated sales of securities on the date of its reorganization, the Plan provides that it may enter into short-term "bridge" financing in the maximum amount (exclusive of a revolving credit agreement of up to $250 million), of up to approximately $1.5 billion.

Step 2 will occur after all the conditions to Northeast's acquisition of PSNH are satisfied. Under step two, NUAC will merge with and into Stand-Alone PSNH ("Merger"),[10] which will be the surviving corporation, New PSNH. The common stock of Stand-Alone PSNH held by PSNH's unsecured creditors and equity security holders will be cancelled and the holders will receive $20 in cash per share for such stock; [11] the holders of Contingent Certificates will receive the Northeast Warrants; the common stock of NUAC will be converted into New PSNH common stock, which will be owned by Northeast. In connection with the Merger, the Stand-Alone PSNH's interest in Seabrook will be transferred to North Atlantic, which will initially be established as a Stand-Alone PSNH subsidiary company, and Stand-Alone PSNH will sell or distribute its North Atlantic common stock to Northeast, at which point North Atlantic will become a wholly owned subsidiary company of Northeast. North Atlantic will assume the Contingent Certificates.

Northeast states that, in the event that it is determined that it is impractical to effect some or all of the contemplated sales of securities on the closing date, the maximum amount of short-term "bridge" financing for New PSNH, North Atlantic and Northeast (exclusive of revolving credit limits described herein) would be up to $1.35 billion, $400 million and $500 million, respectively. These amounts do not reflect revolving credit arrangements of up to $125 million for New PSNH, $125 million for North Atlantic and $100 million for Northeast.

[10] When the merger is completed, the Contingent Notes would become obligations of North Atlantic, and New PSNH would be released from its obligations under the Contingent Notes.

[11] Northeast states that should Step 2 occur on December 31, 1990, approximately 33.7 million shares of Stand-Alone PSNH common stock would be outstanding, convertible into approximately $674 million of cash in the aggregate.

North Atlantic will enter into a life-of-the-unit power contract ("Power Contract") with New PSNH which will provide for payments on a cost-of-service basis that will assure that North Atlantic will recover all its costs of the operation or termination of Seabrook Unit No. 1.

Northeast's Source of Funds

In connection with the Plan, Northeast proposes to invest approximately $460 million in New PSNH and North Atlantic. In order to fund its acquisition of PSNH, Northeast proposes over the next three years to issue and sell additional shares of its common stock, $5 par value per share, in a public offering, or through underwriters pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. Assuming the proposed use of term borrowings, discussed below, Northeast anticipates that it will issue and sell between 9.16 million to 13.1 million shares of its common stock at the time of the acquisition (assuming prices of $17.50 to $25.00 per share). These amounts represent an increase of between 8.4% and 12% of Northeast's currently outstanding common stock.

Northeast further proposes to borrow the balance of the funds required from banks or other institutions under a term loan facility, also pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, which will be repaid by issuing and selling additional Northeast common stock in an amount estimated to generate net proceeds of up to approximately $340 million during the three years following the acquisition, which issuance and sale will be the subject of further Commission authorization.[12] The term loan facility will also be used, as necessary, to provide part of the cash to meet the interest obligations on Northeast's acquisition financing and to fund part of its dividends that will otherwise be supported by New PSNH and North Atlantic, until the capitalization of New PSNH and North Atlantic have improved enough for them to begin paying cash dividends to Northeast on their common stock.

Northeast requests that, pursuant to section 12(c) of the Act and Rule 26(c)(3) thereunder, it be authorized for up to five years after the acquisition of PSNH is consummated, to pay dividends on its common stock in reliance on its unrestricted consolidated retained earnings, calculated on the equity method of accounting, not limited to the portion of consolidated retained earnings represented by dividends distributed to Northeast by its subsidiaries. At the end of that up to five-year period, Northeast will again be subject on a prospective basis to the limitations of Rule 26(c)(3) of the Act, except that it will not be required, before paying common dividends, to replenish the retained earnings paid from the undistributed retained earnings subaccount.

[12] Northeast projects that before it begins selling common stock to fund its borrowings, the common stock equity to total capitalization ratio of the consolidated Northeast system will be approximately 27%, and is projected to rise to above 30% within two years.

Exceptions From Competitive Bidding

Exceptions from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder have been requested by: (1) New PSNH with regard to its proposed issuances and sales of preferred stock and first mortgage bonds, and the revolving credit agreement, by private placement, and to the term loan facility, through a negotiated underwriting; (2) North Atlantic with regard to its proposed issuance and sale of first mortgage bonds through private placement or negotiated underwriting and to the revolving credit agreement through private placement; (3) Northeast with regard to its proposed issuance of Northeast Warrants, issuance and sale of common stock through the negotiated underwriting, and term loan facility through private placement. It is also requested that New PSNH, North Atlantic and Northeast each be authorized, as discussed above, and as appropriate, to retain one or more experienced investment banking firms to effect one or more private placements of their respective securities, or to act as the principal managing underwriter or underwriters in the negotiated underwriting of such securities, or to retain one or more banks to act as lead banks in the arrangement or syndication of the proposed term loan facilities. New PSNH, North Atlantic and Northeast may do so.

Interim Management Arrangements

The Plan provides for NUSCO to render managerial and administrative services to PSNH, at cost, under a Management Services Agreement ("Services Agreement") between Stand-Alone PSNH and NUSCO, during the interim transition period, if any, between confirmation of the Plan by the Bankruptcy Court and the closing of Northeast's proposed acquisition. Under the Services Agreement, NUSCO will be

fully responsible for the management of Stand-Alone PSNH during the interim transition period, subject to certain requirements. In the event that the Merger Agreement is terminated, the Services Agreement will also terminate, except that NUSCO will be obligated to continue to provide management services for specified periods until alternate arrangements can be put in place.

On January 5, 1990, NUSCO filed with the Commission a notification of its intention to render the services called for by the Services Agreement, in accordance with the procedure specified in the Commission's order dated June 30, 1966 (HCAR No. 15519) ("June 1966 Order") covering changes in the type and character of companies being served by NUSCO. Under the June 1966 Order, NUSCO will be entitled to begin rendering those services if the Commission does not disapprove within 60-days after the date on which notification was given, subject to the Services Agreement becoming effective when authorized by the Bankruptcy Court's confirmation order.

Intersystem Agreements

In connection with the Plan, New PSNH and North Atlantic propose to enter into several arrangements with other Northeast system companies for the sale to New PSNH of entitlements in certain of the generating units of the Northeast system, if such entitlements are needed by New PSNH. Under a sharing agreement, certain savings that accrue to the consolidated system as a consequence of it operating as a single integrated system will be allocated among all the Northeast operating companies, including New PSNH. The consolidated Northeast system companies will enter into a revised tax sharing agreement. New PSNH and North Atlantic will each enter into service agreements with NUSCO.

General Public Utilities Corporation (70–7730)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(c) and 12(e) and Rules 50(a)(5), 42 62 and 65 thereunder.

GPU has adopted, subject to stockholder approval at the 1990 Annual Meeting, a 1990 stock Plan For Employees of General Public Utilities and Subsidiaries ("Plan"). Under the Plan, designated employees may be paid a portion of their compensation in the following forms: (i) incentive stock options as provided in Section 422A of the Internal Revenue Code of 1986, as amended, and nonqualified stock options (collectively, "Options"); (ii) shares of common stock, per value $2.50 per share ("Common Stock") which will be restricted as provided in the Plan ("Restricted Shares") (iii) rights to acquire Common Stock, which will be restricted as provided in the Plan ("Restricted Units"), or (iv) stock appreciation rights which may accompany options ("Rights").

A maximum of one million shares of Common Stock may be awarded under the Plan. The Plan will be administered by the Personnel and Compensation Committee ("Committee") of GPU's Board of Directors. Only employees of GPU or of its wholly owned direct or indirect subsidiaries may receive awards under the Plan.

GPU requests authority from time-to-time until December 31, 2000, to issue, and to reacquire upon any forfeiture, up to one million additional shares of Common Stock, pursuant to the Plan. GPU also requests authority to solicit from its stockholders proxies for use at the 1990 Annual Meeting of Stockholders with respect to approval of (i) the Plan and (ii) an amendment to GPU's Restricted Stock Plan for Outside Directors ("Restricted Plan"), for which authority has been granted by order dated March 30, 1989 (HCAR No. 24851), to provide that each director of GPU participating in the Restricted Plan shall automatically receive a fixed annual award of 100 shares of common stock under that plan rather than such number of shares, if any, as might be determined by the Plan's administrative committee in order to ensure that the committee administering the Plan consists entirely of "disinterested persons" within the meaning of the Securities Exchange Act of 1934.

GPU also requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for the issuance of common stock under the Plan.

New England Electric System (70–7732)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582–0099, a registered holding company, has filed an application-declaration under sections 67(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and Rules 42, 62, 65 and 50(a)(5) thereunder.

NEES proposes, from time to time through May 1, 1995, to issue and sell an aggregate of up to 500,000 authorized but unissued common shares, $1 par value, pursuant to the New England Electric Companies' Incentive Share Plan ("Plan") or, in the alternative, to purchase all of such shares in the open market.

The price of NEES common shares purchased from NEES will be based upon the average of the high and low prices of NEES common shares on the New York Stock Exchange—Composite Transactions as reported in The Wall Street Journal for five consecutive trading days.

The proceeds from the continued sale of the common shares by NEES will be added to the general funds of NEES and be used for any or all of the following purposes: (1) investment in NEES's subsidiaries, (ii) payment of indebtedness of NEES, or (iii) general purposes of NEES.

NEES proposes to solicit proxies from its shareholders for approval of the Plan in order to exempt certain Plan participants from the requirements of section 16(b) of the Securities Exchange Act of 1934.

New England Power Company (70–7733)

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, an electric utility subsidiary of New England Electric System, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

NEP proposes to execute and deliver one or more loan agreements with the Industrial Development Authority of the State of New Hampshire ("NHIDA") in connection with the issue by such authority on behalf of NEP of up to $75 million aggregate principal amount of pollution control revenue bonds ("PCRBs") with a maturity of less than one year, on terms acceptable to NEP. Proceeds from any issue of PCRBs by the NHIDA would be loand to NEP to finance certain pollution control facilities associated with its approximately 10% share of the Seabrook 1 nuclear project.

Any PCRBs issued on NEP's behalf will be sold by NHIDA through arrangements negotiated with underwriters. The PCRBs will be backed by NEP's promise to make payments to NHIDA which correspond in both timing and amount to the payments the issuing authority is obligated to make to bondholders. The PCRBs will not be otherwise secured. NEP has requested the option to roll over the PCRBs for a period not exceeding three years, subject to Commission approval.

NEP currently has authority, through October 31, 1990, to make short-term borrowings from banks and the system money pool in an aggregate amount of $300 million outstanding at any one time

(HCAR No. 24733, October 21, 1988). Any short-term borrowings made under this authority shall be applied to the $300 million overall limitation on borrowings.

NEP has requested an exception from competitive bidding pursuant to Rule 50(a)(5) in connection with its execution and delivery of the loan agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2953 Filed 2-7-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17329; 812-7456]

Citibank, N.A.; Notice of Application

February 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Citibank, N.A.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from Section 17(f).

SUMMARY OF APPLICATION: Applicant seeks an order amending an earlier order which permits Applicant to maintain securities and other assets of United States investment companies for which Applicant serves as custodian or subcustodian with fifteen wholly-owned foreign bank subsidiaries of its bank holding company parent, Citicorp. The relief sought would exempt (a) Applicant, (b) any registered management investment company, other than an investment company registered under Section 7(d) of the 1940 Act for which Applicant serves as custodian or subcustodian, and (c) any custodian for such registered company for which Applicant serves as subcustodian, for proposed foreign custody arrangements with the following wholly-owned or majority-owned foreign bank subsidiaries of Citicorp, namely; Citicorp Nominees Pty. Ltd. in Australia; Citibank Nominees (New Zealand) Ltd.; and Citibank Portugal S.A. (each of which is hereinafter referred to as a "Foreign Subsidiary").

FILING DATE: The applicant was filed on January 8, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 26, 1990, and should be accompanied by proof of service on the Applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Citibank, N.A., c/o Jonathan R. Bell, Esq., Debevoise & Plimpton, 875 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

APPLICANT'S REPRESENTATIONS:

1. Under the Existing Order, Applicant as the custodian or subcustodian of the securities and other assets of United States registered investment companies may deposit such securities and assets with fifteen foreign bank subsidiaries of Applicant's bank holding company parent, Citicorp, that do not meet the minimum shareholders' equity requirement to qualify as "eligible foreign custodians" under Rule 17f-5. Applicant now seeks an exemption for three additional foreign bank subsidiaries of Citicorp within Applicant's global custody network.

2. Each Foreign Subsidiary is a wholly-owned or majority-owned subsidiary of Citicorp and is a banking institution or trust company incorporated under the laws of a country other than the United States and regulated as such by that country's government or an agency thereof. Each of the Foreign Subsidiaries is experienced, capable and well qualified to provide custody services to United States investment companies and, under the foreign custody arrangements proposed, the protection of investors would not be diminished.

APPLICANT'S LEGAL CONCLUSIONS:

1. Applicant requests this exemption because the Foreign Subsidiaries are not "eligible foreign custodians" under Rule 17f-5 and therefore are not eligible for inclusion in the global custody network Applicant offers to its United States investment company clients. The Foreign Subsidiaries do not qualify as "eligible foreign custodians" because they do not have the minimum of $200 million shareholders equity as required in Rule 17f-5. Applicant asserts that the exemption requested 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 1940 Act.

2. The terms of the proposed custody arrangements will adequately protect United States investment companies and their shareholders against loss. Applicant will remain liable for the performance of the duties and obligations delegated to the Foreign Subsidiaries, while Citicorp will be responsible for losses relating to the bankruptcy or insolvency of the Foreign Subsidiaries. The risks associated with foreign investment will remain with the United States investment companies (which, presumably, will disclose any such material risks to investors). In addition, the relief requested is similar to that previously granted to Applicant in the Existing Order. *See Citibank, N.A.*, Investment Company Act Release No. 15617 (March 11, 1987).

3. Applicant further asserts that provision of the Guarantee (as described and defined below) by Citicorp rather than Applicant will not negatively affect the level of protection afforded the United States investment companies and custodians whose securities are held in the custody of the Foreign Subsidiaries.

4. The exemption requested will permit Applicant the flexibility of using in its global custody network foreign institutions which Applicant believes have particularly desirable characteristics or qualifications notwithstanding their low shareholders' equity levels.

APPLICANT'S CONDITIONS: If the requested order is granted, Applicant agrees to the following conditions:

1. The proposed foreign custody arrangements with the Foreign Subsidiaries will satisfy the requirements of Rule 17f-5 in all respects other than minimum shareholders' equity.

2. Securities of United States investment companies will be maintained with a Foreign Subsidiary only in accordance with an agreement, required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy all the requirements of Rule 17f-5 relating to shareholders' equity, among the United States investment companies or custodians for

which Applicant serves as custodian or subcustodian, Applicant, the Foreign Subsidiary and Citicorp, pursuant to the terms of which, (a) Applicant would act as the custodian or subcustodian of the securities of the United States innvestment company, (b) Applicant would delegate to the Foreign Subsidiary such of Applicant's duties and obligations as would be necessary to permit the Foreign Subsidiary to hold in custody in the country in which it operates, the securities of the United States investment company or custodian, and (c) Citicorp would agree to be liable in accordance with the terms of a guarantee (the "Guarantee") for losses relating to the bankruptcy or insolvency of the Foreign Subsidiary. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiary would not relieve Applicant of any responsibility to the United States investment company or custodian for any loss due to such delegation except such loss as may result from (i) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and (ii) other risks of loss for which neither Applicant nor the Foreign Subsidiary would be liable under Rule 17f–5.

3. The dollar value of the Guarantee for each Foreign Subsidiary will be adjusted based on the quarterly fluctuation in the market value of United States investment company assets in the custody of such Foreign Subsidiary, as follows: The market value of United States investment company assets in the custody of each Foreign Subsidiary will be calculated by Applicant or such Foreign Subsidiary at the end of each calendar quarter. If it is determined that the market value of United States investment company assets in custody exceeds the Guarantee with respect to any Foreign Subsidiary, Applicant will, as soon as practicable but in no event later than 30 days after receipt of the quarterly valuation, cause the Guarantee to be increased so as to fully cover the value of United States investment company assets in the custody of such Foreign Subsidiaries, calculated as of the end of the most recent quarterly report.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–2857 Filed 2–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17327; 812–7162]

FAI Insurances Limited; Notice of Application

January 31, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: FAI Insurances Limited ("FAI" or "Applicant").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 3(b)(2), or, in the alternative, section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: FAI seeks an order declaring that it is engaged in a business other than the investment company business or, alternatively, exempting it from all provisions of the 1940 Act in connection with the offering and sale of its equity securities in the United States in the form of American Depository Shares represented by American Depository Receipts.

FILING DATE: The application was filed on October 26, 1988, and amendments to the application were filed on April 24, August 16, and December 13, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1990, and should be accompanied by proof of service on the Applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. FAI, c/o Marc M. Tract, Esq., Kroll & Tract, 500 Fifth Avenue, New York, New York 10110.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. FAI, an Australian corporation, is a diversified insurance company which carries on all types of insurance business throughout Australia and is the holding company for its several subsidiary and associated companies (the "Group"). As of June 30, 1987, the Group was comprised of FAI, fifty-eight subsidiary companies and four associated companies of which all except one were incorporated in various States of Australia. Since June 30, 1987, one additional subsidiary in the United Kingdom and one in Hong Kong were acquired.

2. As of December 1987, FAI had approximately 5400 shareholders worldwide, including 7 direct shareholders with registered addresses in the United States holding a total of 8136 shares. In addition, there were 27 owners/holders of Sponsored American Depository Receipts ("ADRs") holding a total of 662,590 ADRs. FAI is not directly or indirectly owned or controlled by another corporation or by any foreign government.

3. FAI is listed on the New York Stock Exchange ("NYSE") for the trading of American Depository Shares through American Depository Receipts. A Form F–6 was filed with the depository agreement and ADR Form, so that the ADRs can be traded on the over-the-counter market. A Form 20–F was filed on December 30, 1987 with the SEC as a registration statement pursuant to Section 12(g) of the Securities Exchange Act of 1934, and a registration statement on Form 8–A was filed on September 19, 1988 pursuant to Section 12(b) of the Securities Exchange Act of 1934.

4. FAI holds a substantial number of shares in all its subsidiaries. This portfolio of investment securities is approximately 63.9% of the value of FAI's total assets, well in excess of 40% of the value of FAI's total assets. Therefore FAI, absent an exemption, most probably would be considered an "investment company" within the meaning of section 3(a)(3) of the 1940 Act. Although FAI believes it is currently exempt, pursuant to Section 3(b)(1) of the 1940 Act, FAI requests that the SEC confirm its view that it is excepted from the definition of an investment company by issuing an order under Section 3(b)(2) of the 1940 Act. Alternatively, FAI seeks an order pursuant to Section 6(c) of the 1940 Act exempting FAI from all provisions of the 1940 Act and the rules and regulations thereunder.

5. The greater part of FAI's insurance operations are carried on by four companies, namely: FAI itself; FAI General Insurance Company Limited; FAI Car Owners Mutual Insurance Company Limited; and FAI Traders Insurance Company Limited. These companies are general insurance operations which carry on insurance underwriting and investment and property ownership activities related to premiums generated by underwriting. For the year ended June 30, 1987, on a consolidated basis, 85.35% of the Group's total assets of A$2,162,169,000 was represented by these four companies and the other insurance company subsidiaries and affiliates of FAI. Out of a total of A$110,769,430 in income for the same period, A$75,622,280 or 68.27%, represented the consolidated income of the Group's insurance companies.

6. FAI, formerly known as Australian and International Insurances Limited, was incorporated on February 10, 1953 and commenced underwriting general insurance business in the same year. At the time the application was originally filed, Lader Pty. Limited, representing the family of FAI's Chairman, L.J. Adler, held 36% of the issued ordinary shares of FAI. No other FAI shareholder held more than 10% of its issued shares. In 1960, Mr. Adler formed Fire and All Risk Insurance Company Limited, now known as FAI General Insurance Company Limited. From inception, Fire and All Risks Insurance Company Limited underwrote most classes of general insurance, but specialized in motor vehicle insurance. To further its motor vehicle underwriting, Fire and Risks Insurance Company Limited acquired the long established Car Owners Mutual Insurance Company Limited, now known as FAI Car Owners Mutual Insurance Company, in 1965. In 1968, Mr. Adler acquired 86% of the capital of the publicly listed Australian and International Insurances Limited and managed the company in close association with Fire and All Risk Insurance Company Limited, which was wholly owned by him and his family company, Lader Pty. Limited. In December 1971, Australian and International Insurances Limited acquired Fire and All Risks Insurance Company Limited. In 1973, Australian and International Insurances Limited changed its name to FAI Insurances Limited and is now the parent company of the Group.

7. FAI currently holds 100% of the voting power of the outstanding FAI Car Owners Mutual Insurance Company Limited, FAI General Insurance Company Limited, and FAI Traders Insurance Company Limited. In addition, FAI holds well over 50% of the voting power of the outstanding voting securities of its other subsidiary and associated companies.

8. The insurance industry is regulated and supervised by the Australian Federal Government following the legislation of the Insurance Act 1973 (the "Act"). The Act restricts the right to carry on insurance business in Australia to authorized insurers and to Lloyd's underwriters. FAI is an authorized insurer. Authorized insurers are subject to two solvency tests.

The first, applicable to Australian incorporated companies, requires that a company's assets, at market value, exceed its liabilities by not less than $1 million or 20 per cent of its last year's premium income, whichever is the greater. The second, applicable to all companies, requires that assets in Australia, at market value, exceed liabilities in Australia by not less than $1 million or 20 percent of their last year's premium income, whichever is the greater. An insurer is required to file its annual audited financial statements and considerable other financial and insurance information each year.

9. The Act appoints an Insurance Commissioner whose responsibility is to insure that every insurer complies with the various requirements of the legislation. The Insurance Commissioner has power to require an insurer to provide him with such information as he requests and has power to appoint an Inspector with extensive powers to investigate the activities of an insurer.

Applicant's Legal Analysis

1. FAI is primarily engaged through its subsidiaries in the business of providing insurance. While Section 3(c)(3) of the 1940 Act provides that insurance companies are not investment companies within the meaning of the 1940 Act, the 1940 Act defines "insurance company" to include only domestic insurers that are subject to supervision by an insurance commissioner or similar official or agency of a state in the United States. FAI has filed the application to prevent uncertainty as to its status under the 1940 Act resulting from this definition.

2. FAI conducts its insurance business directly, through its majority-owned subsidiaries and through its controlled companies. As a necessary part of that business, if does invest, reinvest, and trade in securities. If FAI were deemed to be an investment company, it would only be by viture of the fact that, at any point in time, the value of investment securities it holds or owns might exceed 40 percent of the value of its total assets on an unconsolidated basis, thereby placing it within the definition of an investment company pursuant to Section 3(a)(3) of the 1940 Act.

3. Any insurance company, domestic or foreign, could be categorized as an investment company under the definition of Section 3(a)(3). Congress, recognizing the inapplicability of the 1940 Act's pruposes to the business and practices of insurance companies and the adequate state regulation of insurance companies, exempted from the provisions of the 1940 Act insurance companies whose business was regulated by an insurance commissioner or similar official of a state or territory. Where, as with FAI, it can be shown that the insurance practices and regulation of an insurance company in a foreign country are similar to, and provide the same protection as, United States insurance practices and regulation, it is appropriate for the SEC to exercise its discretionary power to grant an exemption from the 1940 Act to such insurance company.

4. The business of FAI is substantially the same as the business of any United States insurance company and Australian insurance regulation, like state regulation in the United States, provides sufficient control over the financial practices of FAI to protect investors adequately. The similarities in the business and practice of United States and Australian insurance companies and the comprehensiveness of Australian insurance regulation justify an exemption for FAI on the basis of the same principles that Congress exempted domestic insurance companies, namely, inapplicability of the 1940 Act's purposes to the business and practice of insurance companies and comprehensive non-federal regulation.

Applicant's Conditions

If the requested order is granted, FAI agrees to the following conditions:

1. In any offering of its equity securities made pursuant to a registration statement under the Securities Act of 1933 ("1933 Act"), FAI will not sell such securities until the registration statement is declared effective by the SEC. FAI will furnish a prospectus to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

2. Any offering of equity securities by FAI in the United States not registered under the 1933 Act will be made on the basis of disclosure documents which are at least as comprehensive as is customary in the United States for such

an unregistered offering and will include FAI's most recently available profit and loss statement together with a description of material differences between the accounting principles applied in the preparation of such financial statements and generally accepted accounting principles in the United States. Such financial statements shall be updated promptly to reflect material changes in the financial condition of FAI.

3. Any future offering in the United States of equity securities by FAI will only be made if such securities have been registered under the 1933 Act or if FAI has received an opinion from its United States legal counsel to the effect that, under the circumstances of the proposed offering, the securities are not required to be registered under the 1933 Act because of an exemption therefrom. FAI does not request SEC review or approval of any such opinion of FAI's United States legal counsel.

4. With regard to public offerings of equity securities not registered under the 1933 Act that are not issued in the United States or sold to United States persons (but where there is a reasonable possibility of offers or sales of such equity securities being made in the United States or to United States persons), FAI will adopt agreements and procedures reasonably designed to prevent such equity securities from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible).

5. FAI also undertakes, in connection with any offering in the United States of equity securities, to appoint a United States person as agent to accept any process which may be served in any action based on the offer or sale of such securities and instituted in any state or federal court. FAI further undertakes that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding. So long as such securities remain outstanding, FAI will appoint a successor agent for service if the agent first appointed is discharged or is unwilling or unable to continue to serve as agent for service. FAI will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise.

6. FAI will issue equity securities in the United States only so long as it and the other insurance companies in the Group continue to be supervised by Australian government authorities having such power of supervision in Australia.

7. FAI undertakes that any exemptive order granted on the application will remain in effect only as long as FAI and the Group are primarily engaged in the insurance business in Australia and are regulated as such and engaged primarily and predominantly in the writing of bona fide insurance agreements of the types specified in Section 3(a)(8) of the Securities Act of 1933 (having substantially similar credit, insurance underwriting and investment risk characteristics as those sold in the United States) or the reinsurance of risks on such agreements underwritten by bona fide insurance companies.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2858 Filed 2-7-90; 8:45 am]

BILLING CODE 8910-01-M

[Rel. No. IC-17328; 812-7361]; Notice of Application

Application for Order Under the Investment Co. Act of 1940; NeoRx Corp.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: NeoRx Corporation.

RELEVANT 1940 ACT SECTION: Order requested under section 3(b)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it is not an investment company as defined in section 3 of the 1940 Act.

FILING DATES: The application was filed on July 26, 1989 and amended on December 26, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 27, 1990, and should be accompanied by proof of service on the Applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, NeoRx Corporation, 410 West Harrison, Seattle, Washington 98119, Attention: Robert M. Littauer, with a copy to Jan M. Aalbregtse, Stoel Rives Boley Jones & Grey, 36th Floor, One Union Square, 600 University Street, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511 or Max Berueffy, Branch Chief, (202) 272-3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. NeoRx is a development stage company primarily engaged in developing proprietary technologies for *in vivo* (*i.e.*, in the body) detection and treatment of cancer. NeoRx is working to develop monoclonal antibody-based pharmaceutical products. NeoRx is developing proprietary technologies to conjuate (*i.e.*, to link) a variety of agents to monoclonal antibodies and deliver the resulting conjugates to cancer cells.

2. NeoRx began operations in February 1984, and was incorported under Washington law in May 1984. On August 11, 1988, NeoRx completed its initial public offering and became a reporting company under the Securities Exchange Act of 1934. The sale of equity securities raised $52,000,000 from February 1984 to March 1989. On June 7, 1989, NeoRx completed an offering of 9 3/4% convertible subordinated debentures due 2014. This debt offering raised $27,000,000.

3. NeoRx has derived no revenues from the sale of its products. It has derived substantially all of its revenues from development and licensing agreements and from government research contracts. A development and licensing agreement with Kodak has provided $13 million in revenues and government sponsored research activities have provided $2.3 million. Revenue from investments constituted between 17% and 34% of total revenues over the previous four quarters.

4. NeoRx has placed the proceeds from its equity and debt offerings in cash, cash equivalents, and short-term investments. Large cash reserves and liquid assets are necessary to fund

NeoRx's research and development activities. NeoRx anticipates using the proceeds from the initial public offering and sale of debentures to fund future research and development activities. By using its funds for these purposes, NeoRx anticipates depleting its reserves of cash, cash equivalents and short-term investments by September, 1991.

Applicant's Legal Analysis

1. Under section 3(a)(3) of the 1940 Act, the term "investment company" includes any issuer which

is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

2. As of June 30, 1989, NeoRx had 34.8% of book value of total assets invested in cash, money market funds, bankers acceptances, securities issued by the federal government, corporate bonds with a maturity of no more than 90 days and certificates of deposits. NeoRx also had 41.9% of book value of total assets in Federal Home Loan Bank obligations and corporate debt obligations.

3. Notwithstanding section 3(a)(3) of the 1940 Act, the Commission may, pursuant to section 3(b)(2), issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

4. NeoRx's historical development, public representations of policy, the activities of its officers and directors, the nature of its assets, and the sources of its income all demonstrate that NeoRx is primarily engaged in developing pharmaceutical products and thus is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities within the meaning of section 3(b)(2) of the 1940 Act.

5. Since its formation in 1984, NeoRx has historically engaged in the development of monoclonal antibody-based pharmaceutical products. NeoRx was formed for this purpose and all activities since formation have been directed to this goal.

6. In its prospectuses, disclosure documents filed under the Securities Exchange Act of 1934, and annual reports to stockholders, NeoRx has represented that it is engaged in the business of developing pharmaceutical products. The prospectuses state that substantially all of the proceeds from the sale of stock and debentures will be used to finance operating losses from research and development, selling, general and administrative expenses and to finance the interest on its debentures.

7. All of the officers and directors dedicate substantially all of their working time for NeoRx to operational and administrative activities. Only two of NeoRx's 170 employees devote time to making investments. One of these employees devotes less than 5% of his time and the other less than 10% to the process of making investments. The directors' involvement has been to adopt policies directing NeoRx's officers in the investment of excess cash.

8. In addition to its short-term securities investments, NeoRx also has significant intangible assets, such as patent applications, to which it has attributed no value. If the fair value of these intangibles was considered, the fair market value of NeoRx's investment securities would be substantially less than 40% of the fair market value of its total assets.

9. Although NeoRx has obtained a substantial portion of its revenue from interest income, this is because it is in the development stage and does not yet generate significant revenue from operations.

10. The 1940 Act was not intended to regulate companies engaged in the technology industries. Subjecting NeoRx to the provisions of the 1940 Act would result in redundant protection with respect to a company registered under the Securities Exchange Act of 1934, misleading presentation of financial information, expensive burdensome and unnecessary regulation, and forced changes in business.

11. It is in the public interest for the Commission to issue an order pursuant to section 3(b)(2) declaring NeoRx to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

Conditions

NeoRx agrees to the following as conditions if the requested order is granted:

a. NeoRx will seek to decrease the value of its total assets comprised of investment securities so as not to be an investment company within the meaning of section 3(a) of the 1940 Act as soon as reasonably possible; and

b. NeoRx will refrain from investing or trading for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2862 Filed 2-7-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: William Cline, Small Business Administration, 1441 L Street NW., room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB REVIEWER: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Small Business Development Center. Project Officer Checklist.
Form No.: SBA Form 59.
Frequency: Quarterly.
Description of respondents: Small Business Development Centers.
Annual Responses: 224.
Annual Burden Hours: 448.

Title: Small Business Institute. Counseling Case Report.
Form No.: n/a.
Description of Respondents: Small Business Institute. Counselor.
Annual Responses: 6,300.
Annual Burden Hours: 45,360.

Title: National Training Participant. Evaluation Questionnaire.
Form No.: SBA Form 20.
Frequency: On occasion.
Description of respondents: Participants in SBA Business. Development Training Programs.
Annual Responses: 40,000.
Annual Burden Hours: 10,000.

William Cline,
Chief, Administrative, Information Branch.
[FR Doc. 90–2875 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, California, will hold a public meeting at 10 a.m. on Wednesday, February 7, 1990, at the Oakland Chamber of Commerce, conference room, Oakland, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the Office of District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street, 4th Floor, San Francisco, California 94105; telephone 415/744–6801.

Dated: January 31, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–2871 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting at 8 a.m. on Monday, February 26, 1990, at the Days Inn, 900 East Main Street, Meriden, Connecticut, 06450, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director, U.S. Small Business Administration, Hartford District Office, 330 Main Street, Hartford, Connecticut, 06106; telephone 203/240–4570.

Dated: January 31, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–2872 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 10 a.m. to 2:30 p.m. on Thursday, February 22, 1990, in the Center Building, 7825 Baymeadows Way, suite 100–B, Jacksonville, Florida 32256–7504, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas M. Short, District Director, U.S. Small Business Administration, Jacksonville District Office, Center Building, 7825 Baymeadows Way, suite 100–B, Jacksonville, Florida 32256–7504; telephone 904/443–1971.

Dated: January 31, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–2873 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public hearing at 9:30 a.m. Thursday, February 15, 1990, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, conference room 4113A, Honolulu, Hawaii 96850, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850; telephone 808/541–2990.

Dated: January 31, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–2874 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, Maryland, will hold a public meeting from 1 p.m. to 4 p.m. on Wednesday, February 14, 1990, at the Ramada Inn Hagerstown, 901 Dual Highway, Hagerstown, Maryland 21740, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, Baltimore District Office, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202; telephone 301/962–2054.

Dated: January 31, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–2868 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Hato Rey, Puerto Rico, will hold a public meeting at 9 a.m. Thursday, March 1, 1990, at Banco Popular de Puerto Rico, Popular Center, Commercial Banking conference Room, Third Floor, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Carlos E. Chardon, District Director, U.S. Small Business Administration, Federal Building, room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918; telephone 809/766–5002, 5003.

Dated: January 31, 1990.

Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–2869 Filed 2–7–90; 8:45 am]
BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:30 a.m. on Thursday, February 15, 1990, at the Suzanna's Restaurant (Lague Inns), Berlin, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Montpelier

District Office, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602; telephone 802/828–4422.

Dated: January 31, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–2870 Filed 2–7–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1157]

U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 28, 1990 from 9:30 a.m. to 4 p.m. in room 1912, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting will be to review results and activities of January Study Group XVIII ISDN Experts meeting; examine process directions in Study Group XVIII and plan objectives for May Study Group XVIII meeting; review and approve any available contributions for CCITT in the purview of Study Group B in particular, those B–ISDN draft Recommendations that may be offered for accelerated approval during the May meeting, and any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: February 2, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90–2946 Filed 2–7–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1156]

U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 6, 1990 from 10 a.m. to 12 p.m. in Room 1517, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

This meeting will deal specifically with issues related to the work of the Subcommittee on Telecommunication Credit Card Issuer Identifier Code Allocation and Administration.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647 5220. All attendees must use the C Street entrance to the building.

Dated: February 2, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90–2947 Filed 2–7–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1155]

U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 6, 1990 from 1:30 p.m. to 5:00 p.m. in room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of this meeting will include a review of the results of recent meetings of CCITT Study Groups III and I and the ad hoc committee on CCITT Resolution No. 18; and discuss preparations and/or contributions, both U.S. and foreign, for upcoming meetings of Study Groups III and II and other activities under the auspices of Study Group.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647–5220. All attendees must use the C Street entrance to the building.

Dated: February 2, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90–2948 Filed 2–7–90; 8:45 am]

BILLING CODE 4710–07–M

Office of the Secretary

[Public Notice 1153]

Certification Regarding Panama Under Section 561 of Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990

Pursuant to the authority vested in me by section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Pub. L. 101–167) (the "Act"), Executive Order 12163, and Department of State Delegation of Authority No. 145, I hereby certify that the criteria set forth in section 561(a) of the Act have been satisfied.

In particular, the Government of Panama has demonstrated substantial progress in assuring civilian control of the armed forces, and the Panama Defense Forces and its leaders have been removed from nonmilitary activities and institutions; an impartial investigation into allegations of illegal actions by members of the Panama Defense Forces is being conducted; and freedom of the press and other constitutional guarantees, including due process of law, are being restored to the Panamanian people. In addition, the criterion set forth in section 561(a)(3) has been satisfied in the sense that the

democratically elected government of Guillermo Endara, Guillermo Ford, and Ricardo Arias Calderon, who were elected President and Vice Presidents in the elections held May 7, 1989, has now assumed power, and the Government of Panama has committed itself to free and fair elections.

This certification shall be reported to Congress as required by law, and shall be published in the Federal Register.

Dated: January 17, 1990.

James A. Baker III,

Secretary of State.

FR Doc. 90-2934 Filed 2-7-90; 8:45 am]

BILLING CODE 4710-32-M

Bureau of Intelligence and Research

[Public Notice 1154]

Announcement of FY 1990 Soviet-Eastern European Studies Grant Recipients

On January 10, 1990, the U.S. Department of State approved the December 14 recommendations of the Soviet-Eastern European Studies Advisory Committee for the following FY 1990 awards.

1. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $90,000.

Purpose: To provide fellowships in advanced Russian language study in the USSR and intensive, advanced summer language training in Hungarian, Czech, and Slovak in Eastern Europe.

Contact: Dan E. Davidson, Director, USSR Program Group, ACTR/ACCELS, Fifth Floor, 1617 Massachusetts Avenue, NW, Washington, DC 20036 (202) 328-2287.

2. Council on International Educational Exchange

Grant: $45,000.

Purpose: To support advanced Russian language fellowships at Leningrad State University in the semester and academic year programs.

Contact: Damon B. Smith, Deputy Executive Diector, Cooperative Russian Language Program/CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661-1414.

3. Hoover Institution on War, Revolution and Peace at Stanford University

Grant: $200,000.

Purpose: To support postdoctoral fellowships (6-12 months duration) and summer research grants for scholars to conduct individual research projects on the USSR and Eastern Europe at Hoover.

Contact: Richard F. Staar, Coordinator, International Studies Program, Hoover Institution, Stanford, CA 94305 (415) 723-1348.

4. University of Illinois

Grant: $130,000.

Purpose: To provide partial funding for the University's Slavic Reference Service and Summer Research Laboratory on Russia and Eastern Europe.

Contact: Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 1208 W. California Avenue, Urbana, IL (217) 333-1244.

5. International Research and Exchanges Board

Grant: $800,000.

Purpose: To support a variety of activities facilitating access for American scholars to pursue research in the USSR and countries of Eastern Europe.

Contact: Barbara Sassone, IREX, 126 Alexander Street, Princeton, NJ 08540-7102 (609) 683-9500.

6. Joint Committee on Eastern Europe

Grant: $480,000.

Purpose: To support national competitions in the field of East European studies for advanced graduate training, dissertation research, post-doctoral research and language training fellowships; research conferences; and a junior scholar training workshop.

Contact: Jason Parker, Executive Associate, JCEE/American Council of Learned Societies, 228 East 45th Street, New York, NY 10017 (212) 697-1505.

7. Joint Committee on Soviet Studies

Grant: $800,000.

Purpose: To support a national fellowship program for advanced graduate training, dissertation completion, and postdoctoral research awards for junior scholars; a program of institutional awards for teaching positions; institutional grants for intensive training in the languages of the USSR; and a program for annual workshops in underrepresented fields.

Contact: Robert Huber, Staff Associate, JCSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661-0280.

8. National Academy of Sciences

Grant: $25,000.

Purpose: To provide partial support for a program of bilateral workshops on the interrelationships among science and technology activities and economic, environmental and related policies in Eastern Europe.

Contact: Glenn Schweitzer, Director, Soviet and East European Affairs, Office of International Affairs/NAS, 2101 Constitution Avenue, NW., Washington, DC 20416 (202) 334-2644.

9. National Council for Soviet and East European Research

Grant: $1,214,000.

Purpose: To conduct a national competition among American institutions of higher education and not-for-profit corporations in support of postdoctoral research projects on the USSR and Eastern Europe.

Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts Avenue, NW., Suite 304, Washington, DC 20036 (202) 387-0168.

10. Woodrow Wilson Center

Grant: $785,000 ($485,000 to Kennan; $300,000 to EEP)

Purpose: To support the research fellowships and meeting programs of the Kennan Institute for Advanced Russian Studies and the East European activities of the East and West European Program, including an annual junior scholars training seminar, co-sponsored with the JCEE.

Contact: Blair Ruble, Secretary, Kennan Institute, or, John Lampe, East and West European Program, The Wilson Center, 370 L'Enfant Promenade, Suite 704, Washington, DC 20024-2518 (202) 287-3000.

Dated: January 26, 1990.

Kenneth E. Roberts,

Executive Director, Soviet and Eastern European Studies Program.

[FR Doc. 90-2935 Filed 2-7-90; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Capital Airways; Fitness Determination

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90-2-7, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Charles J. Colgan & Associates, Inc. d/b/a National Capital Airways fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: February 2, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–2956 Filed 2–7–90, 8:45 am]

BILLING CODE 4910–62–M

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, eastablish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 89–12–17 set the currently effective two-month SFFL applicable through January 31, 1990.

In establishing the SFFL for the two-month period beginning February 1, 1990, we have projected nonfuel costs based on the year ended September 30, 1989 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 90–2–8 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.3121
Latin American	1.3229
Pacific	1.6728
Canada	1.4423

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation:

Dated: February 2, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–2957 Filed 2–7–90, 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Approval of Noise Compatibility Program; Fort Smith Municipal Airport Fort Smith, Arkansas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Fort Smith Airport Commission under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 20, 1989, the FAA determined that the noise exposure maps submitted by the Fort Smith Airport Commission under part 150 were in compliance with applicable requirements. On December 5, 1989, the Administrator approved the noise compatibility program. All but one of the recommentations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Fort Smith Municipal Airport noise compatibility program is December 5, 1989.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193–0612, (817) 624–5609. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Forth Smith Municipal Airport, effective December 5, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action.

The FAA's approval of disapproval of FAR part 150 program recommendations is measured according to the Standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the

FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Forth Smith Airport Commission submitted to the FAA on September 8, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 17, 1984 through September 8, 1987. The Fort Smith Municipal Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 20, 1989. Notice of this determination was published in the Federal Register on July 5, 1989.

The Fort Smith Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA begin its review of the program on June 20, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 11 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 5, 1989.

Outright approval was granted for all but one of the specific program elements. The acquisition of an undeveloped 15-acre parcel within the 75 Day/Night Level (Ldn) and 70 Ldn contours between the western airport boundary and Interstate Highway 540 was disapproved.

The reason for the disapproval was because the submitted documentation stated the property was vacant and undeveloped, and the 1991 Future Noise Exposure Map identifies the property as such. In addition, the documentation stated the majority of this property is zoned to accommodate industrial and commercial development.

Under the provisions of FAR part 150, vacant/undeveloped land is eligible for acquisition only if it is identified as noncompatible due to existing zoning or prospective development. In summary, the actions which were approved were: Updating and reviewing the FAR part 150 Program, conducting a noise monitoring program, rezoning noncompatible land within the 75 Ldn, continuing compatible zoning within the 65 Ldn, acquiring residences and residential property within the 75 Ldn, amending the City of Fort Smith subdivision regulations in the area of the airport, amending the Comprehensive Plans of the city of Fort Smith and the community of Barling, establishing a noise complaint response and investigation system, coordinating proposed land use changes with the Airport Manager and establishing a FAR Part 150 Program Monitoring Committee.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 5, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Fort Smith Airport Commission.

Issued in Fort Worth, Texas, January 19, 1990.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 90-2905 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statements; Buncombe and Madison Counties, NC

AGENCY: Federal Highway Administration (FHWA), NCDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project between the City of Weaverville and Sam's Gap (the North Carolina/Tennessee state line).

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, 4505 Falls of the Neuse Road, North Carolina 27611, Telephone (919) 790-2852.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the US 23 Corridor between Weaverville and Sam's Gap (the North Carolina/Tennessee state line). The proposed action would be the construction of an interstate standard highway, potentially on a new location, to continue the control of access US 19/US 23 roadway from NC 197 to Sam's Gap (the North Carolina/Tennessee State Line), a distance of about 14.0 miles. The Asheville Urban Area FY 1990 Transportation Improvement Program includes this project. The NCDOT Transportation Improvement Program 1990–1996 also includes this project. Improvements to the corridor are considered necessary to increase traffic service and safety.

Alternatives under consideration include: (1) The "no build" alternative, (2) upgrading US 23/US 19 to a controlled access interstate highway, (3) upgrading part of US 23/US 19 to a controlled access interstate highway standards and a partial relocation, and (4) a controlled access interstate highway on new location.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include: a toll free phone number, the distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in the study area. Information on the time and place of the public meetings and the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 1, 1990.

Roy C. Shelton,

District Engineer, Raleigh, North Carolina.

[FR Doc. 90-2961 Filed 2-7-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 2, 1990.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0041.
Form Number: 966.
Type of Review: Extension.
Title: Corporate Dissolution or Liquidation.
Description: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfer of property.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 26,000.
Estimated Burden Hours Per Response:
Recordkeeping: 5 hours, 1 minute.
Learning about the law or the form: 6 minutes.
Preparing and sending the form to IRS: 11 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 138,060 hours.

OMB Number: 1545–1012.
Form Number: 5305A–SEP.
Type of Review: Extension.
Title: Salary Reduction and Other Elective Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.
Description: This form is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS but to be retained in the employer's records as proof of establishing such a plan, thereby justifying a deduction for contributions made to this SEP. The data is used to verify the deduction.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response:
Recordkeeping: 40 minutes.
Learning about the law or the form: 54 minutes.
Preparing the form: 42 minutes.
Copying, assembling, and sending the form to IRS: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 260,000 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90–2903 Filed 2–7–90; 8:45 am]
BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three year extension of "A Grants Program for Private Organizations." Estimated burden hours per response is 20. Respondents will be required to respond only one time.

DATES: March 12, 1990.

Copies: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: A Grants Program for Private Organizations.
Form Number: Unnumbered.
Abstract: The Office of Private Sector Programs develops cooperative projects with private Sector institutions to support the goals and objectives of USIA. These projects, which emphasize educational and cultural exchanges, are intended to promote a better understanding of the U.S. abroad. Public non-profit organizations interested in conducting educational and cultural exchange programs with the people of foreign countries may apply for grant assistance to USIA. An application for a grant must be in the form of a concept paper of five typewritten pages. Applications are reviewed by staff members of USIA's Office of Private Sector Programs, and then turned over to a panel to be screened for final approval. Grants are not awarded to projects that are essentially research, involve funding of publications, or finance the policy views of foreign

governments. It is the intention of the Federal Government to enhance the educational and cultural exchange programs of private non-profit organizations rather than compete with them.

Proposed Frequency of Responses: No. of respondents—500; Recordkeeping hours—0; Total annual burden—10,000.

Dated: February 2, 1990.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 90–2899 Filed 2–7–90; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 27
Thursday, February 8, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 13, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 15, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

MATTERS TO BE CONSIDERED:

Future Meetings
Correction and Approval of Minutes
Draft Advisory Opinions:
1. Draft AO 1990–1—
Scott D. Roberts on behalf of Digital Corrections Corp.
2. Draft AO 1990–2—
James J. Flannery on behalf of Committee to Re-Elect Congressman Chris Smith
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Hilda Arnold,
Administrative Assistant, Office of the Secretariat, Federal Election Commission.

[FR Doc. 90–3165 Filed 2–6–90; 3:52 pm]
BILLING CODE 6715–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Monday, February 12, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Monday, February 12

3:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that on item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

Dated: February 5, 1990.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 90–3072 Filed 2–6–90; 12:36 pm]
BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

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 on Monday, February 5, 1990, at 11:05 a.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the resolution of a thrift institution and the preemption of state law.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: February 5, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90–3038 Filed 2–6–90; 12:36 pm]
BILLING CODE 6714–01–M

federal register

Thursday
February 8, 1990

Part II

Department of Health and Human Services

Health Care Financing Administration

Medicare Program: Ambulatory Surgical Center; Revision of Payment Rate Methodology and Update of Payment Rates; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-460-FN]

RIN 0938-AD44

Medicare Program; Revision of Ambulatory Surgical Center Payment Rate Methodology

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice of payment rates.

SUMMARY: This final notice sets forth the revised payment rates for ambulatory surgical center services. We are refining the methodology used to determine the payment rates and have based the rates on the most recent survey data collected from participating ambulatory surgical centers. In addition, we have computed the payment rates using the HCFA hospital wage index. We are also incorporating the payment for intraocular lens inserted during cataract surgery into the facility rate as required by section 4063(b) of the Omnibus Budget Reconciliation Act of 1987. Finally, we are changing the payment policy for surgical procedures that are terminated due to medical complications that increase the surgical risk to the patient.

As a result of the refinements to our ratesetting methodology, this final notice establishes eight payment groups rather than the six proposed groups. Of these eight groups, two groups (Group 6 and Group 8) contain only cataract procedures.

DATES: The payment rate methodology and allowance for intraocular lenses contained in this notice are effective for services furnished on or after March 12, 1990.

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (301) 966-4571.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that, under part B of Medicare (Supplementary Medical Insurance), benefits include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and that are performed in an ambulatory surgical center (ASC). As defined in 42 CFR 416.2, an ASC is any distinct entity that—

- Operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization;
- Has an agreement with HCFA to participate in the Medicare program as an ASC; and
- Meets specified conditions for coverage set forth in subpart B of 42 CFR part 416.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure and a charge for the facility's services (such as use of an operating room). Before the enactment of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), if the physician agreed to accept assignment, the physician's professional services furnished in connection with these surgical procedures when performed in an ambulatory setting were paid at 100 percent of the reasonable charge (or 100 percent of the reasonable cost in the case of a health maintenance organization reimbursed under section 1876 of the Act) (42 CFR 416.110). If the physician did not accept assignment for these services, payment was made at 80 percent of the reasonable charge. The changes made to this policy by Public Law 100-203 are discussed below.

Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures meeting the criteria specified under section 1833(i)(1)(A) of the Act. Facility services furnished after June 30, 1987 are subject to the usual Medicare part B 20-percent coinsurance and deductible requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate. The rate is intended to represent the Secretary's estimate of a fair fee that takes into account the cost of facility services provided in conjunction with a procedure. Currently, the rate is a standard overhead amount that does not include physicians' fees and other medical items and services (for example, prosthetic devices) for which separate payment may be authorized under other provisions of the Medicare program.

The Report of the Senate Committee on Finance accompanying section 934 of Public Law 96-499 (the legislation that added the ASC benefit to the Medicare program) states, "The overhead factor is expected to be calculated on a prospective basis * * * utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedures * * *." (See S. Rep. 471, 96th Cong., 1st Sess. 35 (1979).) Section 416.140 of the regulations provides that a survey will be conducted periodically. In addition, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate must result in substantially less Medicare expenditure than would have been paid if the same procedure was performed on an inpatient basis.

On August 5, 1982, we issued two documents in the **Federal Register** to implement the ASC benefit. The first was a final rule to add to the benefits available under part B of Medicare the services associated with certain surgical procedures provided in an ASC setting. (See 47 FR 34082.) In the second document, which was a final notice, the Secretary, after consulting with appropriate medical organizations, specified a list of surgical procedures that may be performed safely on an ambulatory basis in an ASC. (See 47 FR 34099.)

The implementing instructions concerning the ASC benefit are set forth at sections 2266.3 and 5243.3 of the Medicare Carriers Manual (HCFA Pub. 14-3). Section 2266.3 includes the list of covered procedures using the specific procedure codes from the Physicians Current Procedural Terminology, Fourth Edition (commonly referred to as CPT-4). The list currently includes 1535 procedure codes. Section 5243.3 defines the criteria for payment of multiple covered procedures performed in the same operative session. With one exception, all of the covered procedures listed in section 2266.3 and designated by a single CPT-4 code are considered single procedures. The exception, insertion of intraocular lens prosthesis with cataract extraction (initially coded as procedure code 66980 and subsequently recoded as procedure codes 66983 and 66984 to distinguish an intracapsular cataract extraction from an extracapsular extraction, respectively), is treated as two separate procedures. The manual instructs the carriers to pay this procedure at one and one-half times the applicable Group 4 payment rate.

On June 1, 1987, we published in the **Federal Register** (52 FR 20466) a notice to update the ASC facility payment rates for the first time since they were first published in the August 5, 1982 final rule. The updated rates were based on the projected increase (18.7 percent) in the consumer price index for all urban consumers (CPI-U) from September 1982 (the effective date of the initial ASC payment rates) to January 1988 (the midpoint of the 12-month period beginning July 1, 1987).

The ASC facility services payment rates that were effective July 1, 1987 are as follows:

Group 1–$274
Group 2–$326
Group 3–$351
Group 4–$399

II. Recent Legislation

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) was enacted. This legislation includes the following provisions that affect payment for ASC services:

- Section 4084 of Public Law 100–203 amended section 1833(1) of the Act to add ASCs to the list of entities that can bill and be paid separately for the services of certified registered nurse anesthetists (CRNAs) who are either employed by the ASC or who have entered into a contractual arrangement to perform services for the ASC. This change applies to services furnished on or after January 1, 1989. We are implementing this provision in a separate rulemaking document. (See the proposed rule published on January 26, 1989 (54 FR 3803)). For purposes of this final notice, we have analyzed costs associated with CRNA services reported by the 97 audited ASCs in our data base that were used to derive the rates published in this final notice (see discussion below). These data indicate that CRNA costs are less than one percent of the total costs of these audited facilities. Since these costs represent a relatively small percentage of the total ASC costs used in setting the rates, we believe that no adjustment of the rates is required to implement this provision.
- Section 4054 of Public Law 100–203 limited section 1833(1) of the Act to impose the Medicare part B coinsurance and deductible requirements on physicians' services furnished in connection with an ASC covered procedure effective April 1, 1988. As of that date, physicians' services are paid at 80 percent of reasonable charges and beneficiaries are responsible for a 20 percent coinsurance and the Medicare part B deductible. Previously, such physicians' services were paid at 100 percent of reasonable charge; the Part B deductible did not apply.
- Section 4063(b) of Public Law 100–203 amended section 1833(i)(2)(A) of the Act to mandate that payment for an intraocular lens (IOL) insertion performed in an ASC in conjunction with cataract surgery be included in the facility payment rate effective with services furnished on or after July 1, 1988. It further requires that the payment amount for the IOL be reasonable and related to the cost of acquiring certain types of lenses.

III. Provisions of the Proposed Notice

A. Methodology for Ratesetting

The payment methodology published in the August 5, 1982 final rule established four facility payment rate groups based on 1979 and 1980 cost and charge information obtained from approximately 40 ASCs. Using these data, we first developed an indexing method for ranking each covered procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered. By indexing procedures, we were able to determine the value a particular facility places on a covered procedure in relation to other procedures it offers.

We calculated the average of the index numbers across all facilities for each procedure and then arrayed the procedures by this national average index. After determining the national average index value for each procedure, we classified the covered procedures into four groups by that value. We used interval points to establish group breaking points as follows:

Group 1—index less than .90
Group 2—index between .90 and 1.00
Group 3—index between 1.01 and 1.10
Group 4—index greater than 1.10

The index value was used exclusively for classification purposes. For determining the actual payment rate of a group, we used actual charge and cost information reported by the facilities. To establish the payment rates for each of the four groups, we used a five-step procedure, as described below.

Step 1—To remove the effects of area wage differences, we adjusted (that is, deflated) the actual charges for each procedure using the hospital wage index published on June 30, 1981 (46 FR 33641). Based on our analysis of submitted financial reports, we determined that, on the average, the labor portion is approximately one-third of the charge for each procedure. Assuming facilities' charges to be similarly related to costs, we adjusted one-third of the charge for each procedure by the wage index.

Step 2—We then calculated the average charge-per-procedure for each covered procedure by summing the wage-adjusted charge for all facilities in our data base that furnished a given procedure and dividing that result by the number of ASCs performing the same procedure.

Step 3—The procedures within each payment group were arrayed by the average charge. We identified the 60th percentile of average charges within the four payment groups.

Step 4—Based on a review of financial statements submitted by ASCs, we determined a cost-to-charge ratio of 0.9. In order to make Medicare payments to ASCs cost-related as required under section 1833(i)(2) of the Act, we multiplied the average charge at the 60th percentile by 0.9.

Step 5—We further adjusted the average charge at the 60th percentile of each payment group to account for inflation occurring between 1980 and the effective date of the rates (September 7, 1982). The four payment group rates were set at the inflation-adjusted amounts.

As stated, above, we applied an across-the-board inflation factor to update the 1982 payment rates for services furnished on or after July 1, 1987.

We are required by section 1833(i)(2)(A) of the Act to review and to update the ASC payment rates effective July 1, 1987 and annually thereafter. In an attempt to meet that requirement, and implement new rates for services furnished on or after July 1, 1988, we published a proposed notice of updated rates on August 18, 1988 (53 FR 31468). In that notice, for purposes of computing the ASC payment rates for services furnished on or after July 1, 1988, we proposed to revise our ratesetting methodology as described below.

1. Use of the Latest Survey Data

The proposed payment rates were developed based on the most recent survey data available on facility overhead expenses and procedure-specific charges. The data were gathered through a survey of the industry conducted between May and August 1986. The survey instrument, the Ambulatory Surgical Center Payment Rate Survey (Form HCFA–452), was mailed in May 1986 to all ASCs (approximately 500) that were identified as participating facilities during March 1986. Facilities were required to complete Form HCFA–452 by July 10, 1986. Due to difficulties encountered by a large number of facilities in complying with the deadline, the due date was extended for at least 30 days upon request.

Of the approximately 500 facilities included in our mailing, about 470 of the ASCs completed Form HCFA–452. This statistic excludes 12 ASCs that had terminated their participation prior to receipt of the survey form.

The survey gathered information specific to total charges (Medicare and non-Medicare) on each procedure performed and the total number of times the procedure was performed as well as

aggregate charges and cost data for each ASC's most recently completed fiscal year. The survey also obtained information on the number of Medicare patients and total patients treated by the ASC.

In preparing the 470 survey forms for data extraction, we excluded those forms from ASCs that—

- Had been in operation for less than six months;
- Could not separate operation of the ASC from operation of other entities; or
- Were unable to capture charge data from their recordkeeping systems in the manner requested.

The 333 ASCs that remained in our data base are located largely in urban areas (87 percent) and are overwhelmingly freestanding facilities (98 percent). Summary data on the national ASC survey are available upon request to HCFA.

These survey data represent a significantly broader data base than the one used in setting the July 1, 1987 ASC rates. The new survey data base includes data from calendar years 1984, 1985, and 1986. In addition, this data base contains charge information on more than 1200 of the 1535 covered procedures.

Our initial analysis of the survey data indicated that there were flaws in the data, which we have attributed to ASCs' unfamiliarity with the new survey form and inconsistencies among ASCs in their recordkeeping systems. Therefore, we conducted a nationwide audit of a sample of ASCs for the purpose of validating the survey responses and developing from the audited data statistical measures such as the cost-to-charge ratio needed to make payments cost-related.

2. Sample Design and Audit

a. *Sample Design.* To determine the appropriate sample size required to apply the audit findings to the survey responses obtained from a total population of 333 ASCs, we approximated the variance of audited costs, the variance of audited charges, and the correlation between audited costs and audited charges for a randomly selected sample of 50 unaudited Form HCFA–452s. Reported revenues were used as a proxy for charges and reported total expenses were used for costs. After reviewing a variety of precision levels with a given sampling error percentage, we determined that a random sample of 100 facilities would be appropriate to estimate audit results with adequate precision for ratesetting purposes.

To draw the sample, we identified the 333 ASCs solely by their six-digit Medicare provider number. These numbers were listed in numerical sequence. Sample ASCs were then randomly selected using appropriate statistical procedures. Of the 100 ASCs selected for audit only 97 ASCs were actually audited because 3 incorrect provider numbers were included in the sample drawing. However, we used data from only 90 facilities because, of the 97 audited ASCs, 3 ASCs failed to report their charges correctly and 4 ASCs failed to report their Medicare and total patient statistics properly. Of the 97 ASCs actually audited, 20 percent were located in California, 9 percent in Texas, 8 percent in Arizona, and 5 percent in Florida.

b. *Audit Results.* The nationwide audit was conducted from November 1986 through March 1987 by the Medicare fiscal intermediaries. Although ASCs are serviced by Medicare carriers, we had fiscal intermediaries conduct the audits because we believe their audit capabilities are better suited to conduct this type of activity. The home offices of ASC chains included in the sample were audited by the Office of Inspector General (OIG). We instructed the auditors to determine reasonable costs of the audited facilities in accordance with Medicare principles of reimbursement.

Audits resulted in net adjustments that reduced reported costs by 9.1 percent and increased reported aggregated charges by 6.1 percent. The audit adjustments brought aggregate charges more in line with total revenue. The major cost reductions occurred in plant and property, equipment, laboratory, and other or miscellaneous costs such as travel, education, and malpractice insurance premiums. Prosthesis and durable medical equipment (DME) costs were adjusted upward by nearly 13 percent while salary and supply costs were increased 1.5 and 0.8 percent, respectively.

After the audits were completed, we made the following adjustments to the audited data:

- As mentioned above, we eliminated three facilities from the audit sample because their charges were reported improperly. We eliminated four other facilities because they either had no Medicare patients or incorrectly reported their patient statistics. Inclusion of these ASCs would have distorted the computed cost-to-charge ratio.
- We eliminated any excessive compensation paid to an administrator or to a medical director based on our audited analysis of administrative staff expenses and owner's compensation. Our analysis showed that the average salary for one full-time administrator or medical director in an ASC is $40,000. Therefore, we adjusted owner's compensation for nine audited facilities where the amount paid was in excess of $40,000 and was not related to duties performed.
- We determined that charges were not reported for prostheses and DME furnished by the ASCs even though expenses associated with these items were reflected in the cost data. Under the ASC benefit, payment for prostheses and DME is separate from the facility payment rate. Therefore, when computing the cost-to-charge ratio, we excluded those audited costs.

After completing these adjustments, we then performed the following calculations on the audited data:

- We summed each facility's salary and fringe benefits costs including owner's compensation and contractual personnel costs in order to derive the total labor-related costs for the sample.
- We summed each facility's net total costs.
- We then divided the total labor-related costs by the net total costs to derive the average labor-related percentage. The results were used to apportion the per procedure charges for the total population into their labor-related (34.45 percent) and nonlabor-related (65.55 percent) components prior to adjusting for geographic wage differences.
- We multiplied the net total costs for the facility by its ratio of Medicare patients to total patients to determine the portion of its costs attributable to Medicare patients. Similarly, we multiplied each facility's aggregate charges by its ratio of Medicare patients to total patients to determine the portion of its charges attributable to Medicare patients. We then summed each facility's Medicare costs and divided by the sum of the Medicare aggregate charges. We arrayed the resulting ratios in descending order and calculated the median Medicare cost-to-charge ratio for the sample (0.776). We then used the cost-to-charge ratio to relate each per procedure charge to cost as described below. Because the median is unaffected by extreme variations in individual facility costs and charges, we believe that use of a median rather than a mean cost-to-charge ratio is a distinct improvement over the current methodology.

3. Use of an Inflation Adjustment

The initial ASC rates that were determined in 1982 were adjusted for inflation. In addition, when we updated

the rates for services furnished on or after July 1, 1987, we used the CPI–U and Data Resources, Incorporated (DRI) forecasts to adjust the four basic group rates to account for inflation. This adjustment resulted in an across-the-board rate of increase and we used this approach solely to establish revised rates in the absence of a new data base. As a refinement to our ratesetting methodology, we proposed to continue to use the CPI–U and DRI forecasts to construct inflation factors to adjust for the effects of changing price levels on ASC costs. The annual rates of increase used to derive the proposed inflation factors are shown in Table I below. We used this approach to ensure that the rates based on these reporting years include reasonably fair estimates of inflation that has occurred since the period covered by the survey.

We applied the inflation adjustment on a facility-by-facility basis to the per procedure charge extracted from the survey forms to account for historical and projected price changes occurring between the midpoints of the periods included in our data base and the midpoint of the 12-month period to which the new rates would apply (December 31, 1988).

The annual percentage increases that were used to compute the proposed ASC rates are as follows:

TABLE I

Calendar year	Percent increase [1] in the CPI–U
1984	4.3
1985	3.6
1986	1.9
1987	3.8
1988	4.6

[1] DRI fourth quarter 1987 update.

4. Deflation by Wage Index

After adjusting charges for inflation, we separated each ASC's per procedure charge into its labor-related and nonlabor-related portions. The labor-related portion (34.45 percent) was determined by calculating the average percentage of audited labor-related costs for the sample of 90 facilities. We defined labor-related costs to include salary, fringe benefits, contractual personnel expenses and owner's compensation. We then divided the labor-related component of the per procedure charge by the wage index applicable to the ASC's location to derive a standardized labor-related portion of the charge. The effect of this calculation is to remove any variation in ASC per procedure charges that may be due solely to geographical differences in wages. We then added the adjusted labor-related portion of the charge to the nonlabor-related portion prior to arraying and determining the weighted median charges.

5. Wage Index

Since the initial publication of the ASC facility payment rates in the August 5, 1982 final rule, we have used the 1981 Bureau of Labor Statistics (BLS) wage index to adjust the payment rates for area wage variation. This wage index was published initially in the **Federal Register** on June 30, 1981 (46 FR 33637) and subsequently republished on November 26, 1984 (49 FR 46495). The wage index was constructed from 1979 hospital wage and employment data obtained from the BLS ES 202 Employment, Wages, and Contributions file for hospital workers, a standard reporting category. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

Since initial use of the BLS wage index, we have been aware of certain limitations in the BLS data, especially with regard to the lack of information on hours of employment or full-time equivalents. The BLS data provide information only on the number of workers employed at a hospital and their aggregate salaries. As a result, area wage indexes produced from these data do not distinguish between part-time and full-time employees. Although we recognized these shortcomings, we used the BLS wage index in calculating the ASC facility payment rates because we believed that the advantage of using the best national data available outweighed any disadvantages.

It is important to note that when the ASC rates were established in 1982, data were not available to construct an ASC-specific wage index. Fewer than 100 ASCs were operational at that time. Therefore, we adopted the BLS hospital wage index as the best available proxy for adjusting area wage levels. While the 1986 ASC survey instrument (Form HCFA–452) included limited information on salaries and employment, such information was not presented in sufficient detail to permit the construction of an ASC industry-specific wage index from only these survey data. In addition, a significant proportion of ASCs failed to report or erroneously reported either the salary or full-time equivalent data or both.

Since we are still unable to construct an ASC industry-specific wage index, we proposed to adopt the HCFA hospital wage index for use in calculating ASC payment rates. The HCFA hospital wage index was constructed in an effort to overcome the limitations of the BLS data with regard to full-time and part-time employment. We conducted a survey in 1984 that provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report, and for the extraction from hospital records of data on paid hours worked. A complete description of the survey, as well as the survey results, can be found in the following **Federal Register** documents:

- The proposed rule published on July 3, 1984 (49 FR 27439).
- The final rule published on August 31, 1984 (49 FR 34764).
- The June 10, 1985 proposed rule (50 FR 24375).
- The September 3, 1985 final rule (50 FR 35661).

The HCFA wage index, which is used to set the inpatient hospital prospective payment system rates and the skilled nursing facility (SNF) cost limits overcomes the limitations inherent in the BLS index with respect to part-time employment. The HCFA index, which is based on gross salaries and wages, measures the relative difference from area to area in gross average hourly hospital wages, that is, the wages paid to all hospital employees. Because the index is based on the average hourly wage paid in each urban or rural area, it accounts for regional differences in part-time employment.

We proposed to adopt the HCFA wage index that was published in the September 1, 1987 hospital prospective payment final rule (52 FR 33095) for use in calculating the proposed revised ASC facility payment rates. (As explained in section IV.E. below, we have adopted the new HCFA wage index that was published in the September 1, 1989 hospital prospective payment final rule (54 FR 36452)).

6. Urban and Rural Classifications

We currently use Standard Metropolitan Statistical Areas (SMSAs and non-SMSAs) and, in New England, New England County Metropolitan Areas (NECMAs and non-NECMAs) to classify urban and rural locations for purposes of applying the wage index adjustment to ASC facility payment rates. With few exceptions, urban locales consist of those counties that comprise either an SMSA or NECMA as defined in 1981 by the Office of Management and Budget (OMB). Rural areas consist of those counties within a State that lie outside an SMSA or NECMA. However, on June 30, 1983, OMB began using Metropolitan Statistical Areas (MSAs) in lieu of

SMSAs. Therefore, we proposed to use the MSA designations for ASC ratesetting purposes for the following reasons:

- It is the classification system currently used by OMB.
- It is the classification system applied to hospitals subject to the prospective payment system and to SNFs and HHAs for determining payments as well as in calculating their wage indexes.
- It reflects 1980 census changes in urban and rural areas.

MSAs are defined in terms of constituent counties or county equivalents, except in the six New England States. In most cases, there is little difference between the SMSA designations and the MSA designations.

In addition, we incorporated exceptions to the MSA classification system for certain New England counties. These exceptions, authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21), require that any hospital located in New England be classified as being in an urban area if the hospital was classified as being in an urban area under the classification system in effect in 1979. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas:

- Litchfield County, CT in the Hartford-New Britain-Middleton-Bristol CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Manchester-Nashua, NH MSA.
- Newport County, RI in the Providence-Pawtucket-Woonsocket, RI MSA.

In addition, in the September 3, 1986 final rule, which set forth the Federal fiscal year (FY) 1987 changes to the hospital prospective payment system, we provided an exception to the urban/rural classification system for hospitals in redesignated rural counties that are primarily surrounded on all sides by urban counties (51 FR 31469). Using these criteria, Shiawassee County, Michigan, which meets the exceptions criteria, was considered an urban area (in the Flint, Michigan MSA) in computing both the wage index and the payment amounts under the prospective payment system.

We proposed to adopt these urban exceptions for the purpose of applying the HCFA wage index to the ASC facility payment rates. Since the ASC rates are applied also to hospital outpatient departments performing ASC covered procedures, we believe that adoption of the urban exceptions would provide for greater consistency among Medicare facilities in applying the HCFA wage index.

7. Use of Weighted Median

In addition to collecting information on each facility's charge for a given procedure, the ASC survey collected information on the number of times the procedure was furnished in the facility during the period covered by the survey. As explained above, we proposed to make several adjustments to each facility's charge before determining the charge for the procedure across all facilities. We used the median charge for the procedure, weighted by the number of times the procedure was performed on Medicare patients, to determine the charge for the procedure across all facilities. Medicare utilization for each procedure was determined by multiplying the total number of times the procedure was performed in the facility by the ASC's ratio of Medicare patients to total patients. The weighted median represents the charge at or below which the procedure was furnished 50 percent of the time to Medicare patients.

We believe the use of the Medicare weighted median is a distinct improvement over the previous methodology, which used an unweighted average. Previously, each facility carried the same weight regardless of whether it performed a procedure 5 times or 100 times. Weighting by the number of times the procedure was performed on Medicare patients gives recognition to the relative importance of each facility in furnishing procedures covered by the Medicare program. In addition, the use of the median as opposed to the mean eliminates the effect any extreme variations in individual facility charges might have on the charge for the procedure across facilities.

8. Cost-to-Charge Adjustment

Section 1833(i)(2)(A) of the Act requires that Medicare payments to ASCs be cost-related. To comply with this requirement, we proposed to use a cost-to-charge ratio of 0.776. This ratio was calculated based on Medicare costs and charges derived from the 90 ASCs in the audited sample. The Medicare costs and charges were determined by multiplying each facility's total costs and charges by its ratio of Medicare patients to total patients. We multiplied the weighted median charge of each procedure by the proposed cost-to-charge ratio of 0.776.

9. Revised Classification System

Based on our analysis of the new ASC data, we proposed to eliminate the indexing method we currently use and establish a classification system based on fixed dollar intervals. Because of the wide variation found in types of procedures offered by ASCs represented in our data and the lack of a common procedure furnished by all ASCs, the indexing method is no longer effective in constructing a classification system. Rather, we proposed the following classification system based on $75 intervals of the weighted median per procedure cost. This method classifies procedures with similar costs into the same payment group. We also proposed to expand the number of payment groups from four to six.

Additionally, because of the unique character of cataract procedures in ASCs, we solicited comments on the advisability of classifying all cataract procedures within their own payment group.

PROPOSED PAYMENT GROUPS: WEIGHTED MEDIAN PER PROCEDURE COST

Group 1	Less than	$275
Group 2	$275 through	$349
Group 3	$350 through	$424
Group 4	$425 through	$499
Group 5	$500 through	$574
Group 6	$575 and above	

10. Classifying Services with Limited Data

There were a number of services that we could not classify based on the cost data derived under the rate development methodology. The survey gathered no charge data on 316 procedures, generally because the procedures were not added to the list of covered procedures until May 21, 1987. Also, another 346 procedures were reported by fewer than three facilities. Since the pricing patterns of these procedures were based on a small universe of ASCs, we eliminated these costs from our data base to avoid a statistically unreliable impact on the rates.

We proposed to assign these 662 procedures to the appropriate payment groups based on the medical expertise of our staff physicians. This practice is consistent with that used in 1987 when the list of procedures was expanded and our data base did not contain sufficient charge data to classify the added procedures.

In addition, we encountered some aberrant per procedure costs in our data

base that we believed were largely due to low utilization and, in part, to errors in reporting by ASCs. These abnormal costs affect the classification of 259 procedure codes. Of this number, 170 involve cost data reported by more than 2 facilities but fewer than 10 facilities. Analysis of these abnormal costs indicates that, in most cases, less costly procedures had higher per procedure costs than more complex ones.

Since these abnormal costs tend to create inconsistencies among the classification of similar procedures, we proposed to eliminate costs associated with the 259 procedures from our data base. Our analysis indicates that elimination of these procedures does not affect calculation of the group rates since they are generally low-volume procedures. We proposed to assign these surgical procedures to the appropriate payment groups based on the clinical judgment of our staff physicians. These classifications were detailed in Addendum B to the proposed notice.

11. ASC Facility Payment Rates

To establish the proposed payment rate for each of the six payment groups, we used a six-step procedure, as described below.

Step 1—We applied an inflation adjustment based on the CPI–U to the actual per procedure charge extracted from the survey data for each facility in order to account for historical and projected price changes occurring between the midpoint of the facility's fiscal period represented in our data base and the midpoint of the 12-month period to which the new rates would apply (December 31, 1988).

Step 2—To remove the effects of area wage differences, we standardized the charge for each procedure using the proposed wage index by dividing 34.45 percent (the labor-related portion) of the inflated charge for each procedure by the wage index applicable to the ASC's location.

Step 3—After adding the wage adjusted labor-related portion back to the nonlabor-related portion, we calculated the median charge, weighted by the Medicare frequency, for the facilities reporting charge data for the procedure.

Step 4—We related the weighted median charge per procedure to cost by multiplying the weighted median charge for each procedure by 0.776.

Step 5—We arrayed procedures in descending order of median weighted cost values. We then classified the covered procedures into six payment groups based on a classification system that was developed using $75 intervals of the weighted median per procedure wage-adjusted costs.

Step 6—We removed 173 procedures with aberrant costs from the data base and assigned them to the appropriate payment group based on the clinical judgment of our staff physicians. After removing the 173 procedures, we set the payment rate at the weighted median cost of the procedures in each payment group, rounded to the nearest ten dollars.

The resulting are the proposed ASC facility payment rates.

Group 1—$250
Group 2—$310
Group 3—$380
Group 4—$460
Group 5—$500
Group 6—$620

Addendum A in the proposed notice listed each CPT–4 procedure code and the payment group under which we proposed it would be paid, as well as the current group under which it is paid. The proposed rates resulted in an estimated average increase of 5.5 percent. We note that these are not the final ASC payment rates. The final ASC payment rates are set forth in section V. of this notice.

B. Other Proposed Changes

1. Payment for Intraocular Lens Insertion Procedures

Under current policy, when an IOL is inserted during cataract surgery performed in an ASC, separate payment for the lens is made under Medicare Part B at 80 percent of the reasonable charge. Either the ASC or the physician may bill and be paid for the prosthesis. Section 4063(b) of Pub. L. 100–203 amended section 1833(i)(2)(A) of the Act to mandate that, effective July 1, 1988, payment for ASC facility services must include a payment for the IOL that is reasonable and related to the acquisition cost of the class of lens involved.

To implement the provisions of section 4063(b) of Pub. L. 100–203, we proposed to adopt a $200 add-on per lens to the appropriate payment group rate in which the specific cataract procedure that would require insertion of an IOL is classified. As proposed, the add-on would be applicable only to the following covered procedures:

CPT–4 code	Proposed group
66983	6
66984	6
66985	5

While the amendment made by section 4063 of Pub. L. 100–203 to section 1833(i)(2)(A) of the Act requires that payment for IOLs be related to the cost of acquiring the class of lens implanted, we proposed a single payment rate of $200 for IOLs. We based our proposal on a sample review of the ASCs that had participated in our survey conducted by the Office of Inspector General (OIG). Among the sample facilities visited, the OIG determined that 11 had negotiated prices with an average lens price of $200. Another four had negotiated discounts, but it was not possible to determine the discount amount because, for example, the value of credits for supplies and equipment was not reflected on the IOL invoices or in the ASC records. (Copies of this OIG final report entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues," (OAI–09–88–00490 issued in March 1988) can be obtained by writing to the Office of Inspector General, 330 Independence Avenue SW., Washington, DC 20201.)

2. Elimination of Exception for Cataract Extraction With Insertion of Intraocular Lens

Since May 1983, Medicare payment policy has, with one exception, treated each of the ASC covered procedures designated by a single CPT–4 procedure code as a single procedure. The exception has been the insertion of an IOL prosthesis with cataract extraction (procedure codes 66983 and 66984). This cataract procedure has been paid at one and one-half times the applicable Group 4 rate as if it were two procedures. I11We instituted this exception in response to industry comments that the Group 4 rate did not take into account the additional costs associated with inserting the IOL in the same operative session in which the cataract is extracted. The procedure code (66980) used then did not distinguish between the various techniques (for example, intracapsular versus extracapsular) used in cataract surgery. Some industry representatives believed that the added costs of inserting the IOL could vary significantly in relation to a particular technique. Because we did not have sufficient data available in 1982 that would have permitted us to determine a fair estimate of the added costs associated with these types of cataract surgery, we adopted this special exception in order to avoid penalizing ASCs for legitimate facility costs.

However, we now believe that adequate data are available that permit us to determine a payment rate for such surgery. Therefore, we believe that an exception is no longer warranted.

Under the proposed payment methodology, codes 66983 and 66984 cataract procedure are classified in Group 6 with procedures that have comparable costs and, because of their relatively high volume, the cataract procedures heavily influence the payment rate for the group. Therefore, we proposed to eliminate the payment policy exception applicable to procedure codes 66983 and 66984 and pay for each of these procedure codes as a single procedure at the proposed Group 6 rate.

3. Payment for Terminated Surgical Procedures

We proposed to clarify our policy regarding the appropriate ASC payment rate for a scheduled surgical procedure that is terminated due to medical complications that increase the surgical risk to the patient. It is our policy that a denial is appropriate when an ASC submits a claim for a procedure that is terminated either for nonmedical or medical reasons before the ASC has expended substantial resources (for example, the patient on intake complains of cold or flu). We believe that the carriers have had little trouble in making payment decisions in situations such as these. However, they have had difficulty in determining whether, or to what extent, payment should be made when surgery is terminated after the procedure has begun, for example, after anesthesia is induced.

We proposed that carriers pay ASCs 50 percent of the facility payment rate if the surgical procedure is terminated due to the onset of medical complications that occur after the patient has been prepared for surgery and taken to the operating room but before anesthesia has been induced (for example, the patient develops an allergic reaction to a drug administered by the ASC prior to surgery). (This, however, would not preclude the carrier from paying a different percentage of the rates if, in the individual case, documentation would support such action.)

However, if a medical complication arises after the inducement of the anesthetic agent, we proposed that the carrier pay the full applicable rate. In these cases, we believe that resources of the facility are consumed in essentially the same manner and to the same extent as they would have been had the surgery been completed as scheduled. In order for the carriers to pay ASCs a claim for terminated surgery, we proposed that the facility must submit an operative report with each claim. Also, the carriers would be required to report all claims for terminated surgery to the appropriate peer review organization for quality of care review.

IV. Discussion of Public Comments

We received 1,049 timely items of correspondence in response to the proposed notice. Of these items, approximately 300 were form letters that commented on the payment rate for IOLs. Comments were received from physicians, ASC personnel other than physicians, professional health-related organization, manufacturers of IOLs, members of Congress, and members of the public. In general, the commenters were critical of both our proposed rates and our proposed $200 allowance for IOLs. We did not receive any comments on our proposals concerning payment for terminated surgical procedures and elimination of exception for cataract extraction with insertion of IOL. Therefore, we are adopting the changes to these provisions as proposed. The specific comments and our responses to them follow.

A. Inadequacy of Rates

Comment: A large number of commenters believe the proposed rates are not based on ASC costs as required by statute (section 1833 (i)(2)(A) of the Act). Further, they believe that the proposed rates would be inadequate to meet facility costs and that ASCs are being penalized because they are low-cost surgical facilities. Also, these commenters believe our ASC payment rates, historically, have not covered the actual costs of treating Medicare patients and that they are forced to subsidize the care of Medicare patients from the revenues received from furnishing services to non-Medicare patients.

Response: Section 1833(i)(2)(A) of the Act requires the Secretary to establish a standard overhead amount, based on the Secretary's estimate of a fair fee, that approximates the cost of furnishing the service generally. As provided in this section, ASCs receive payment equal to 80 percent of this standard amount. In addition, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate must result in substantially less Medicare expenditures than would have been paid if the same procedure were performed on a hospital inpatient basis.

The group rates that were set forth in our proposed notice were based on actual ASC cost and charge data from calendar years 1984, 1985, and 1986 as reported by Medicare participating facilities. These data were adjusted for inflation. A representative sample (97) of these facilities was selected for audit. After screening the sample for errors, we used the net total costs and aggregate charges from 90 of these facilities to derive the cost-to-charge ratio we used to relate each per procedure charge to cost.

Section 1833(i) of the Act does not explicitly require an ASC cost reporting mechanism. Rather, the report of the Senate Committee on Finance (S. Rep. No. 471, 96th Cong., 1st Sess. 35 (1980)) that accompanied the legislation (Pub. L. 96–499) expressed the intent of Congress that reporting requirements for these facilities be minimal and that sample survey and similar techniques be used to develop reasonable estimates of ASC overhead costs. Therefore, to minimize facility reporting requirements and to comply with statutory requirements that payment be made on a per procedure basis, charges were used as a proxy for procedure costs.

The payment system for ASC facility services was designed to pay all procedures in a group a standard rate. Implicit in such a system is the expectation that some individual procedures in a group may be paid at less than cost, while others may be paid at a rate higher than cost. It is not our intent that a particular facility be paid a rate exactly equal to its costs for each procedure performed. Rather, the intent is that, in the aggregate, the average ASC will be paid approximate incurred costs for procedures performed.

We do not believe that ASC services furnished to Medicare patients are subsidized by revenues received from non-Medicare patients. We note that the number of Medicare participating ASCs has grown significantly from fewer than 50 in 1982, when coverage for ASC services was added to the Medicare program, to more than 970 by the close of 1988. Six hundred of these facilities entered the marketplace between 1983 and 1986 prior to the 18.7 percent rate increase allowed in 1987. This rate of growth leads us to believe that the Medicare rate of payment is adequate to cover ASC costs.

Comment: Many commenters believe that an Ernst and Whinney study on ASC facility costs for cataract surgery, commissioned by the Outpatient Ophthalmic Surgery Society (OOSS), provides the best available cost data for setting a rate on cataract surgery with an IOL insertion. This study was a procedure-specific costing study that measured facility resources used in performing a cataract extraction with insertion of an IOL (using either the intracapsular or extracapsular technique) in a sample of 20 ASCs. The study concluded that a facility rate of $763 would be appropriate for this type

of surgery. The commenters believe the difference between the HCFA proposed rate ($620) and the study's recommended rate of $763 for this procedure is significant and that failure to adopt it would adversely affect ASCs.

Response: The financial data used in the Ernst and Whinney study were not audited. We have learned through our experience with ASC cost reporting that the data reported are often inaccurate. The accuracy of reported data needs to be established by audit to avoid the possibility of basing the study's recommended rate on overstated costs.

While the procedure-specific costing methodology used by Ernst and Whinney may represent a more direct approach to determining costs for a given procedure, the study was limited to only 2 of the more than 1500 Medicare covered ASC procedures. Although these two procedures account for about 53 percent of the ASC Medicare volume and generate approximately 66 percent of the payment ASCs receive from Medicare, we believe that the ASC rate-setting methodology should be uniform across all covered procedures. Further, we believe that failure to apply a methodology uniformly could be perceived as giving preferential treatment to some facilities at the risk of disadvantaging others.

We share the concerns of commenters that the ASC rates should be based on the best data available and are planning to refine the ASC survey instrument, Form HCFA–452, to allow for the direct collection of Medicare utilization for each procedure performed. In addition, we will consider the feasibility of performing resource costing on a significant number of the ASC procedures.

Comment: Many commenters indicated that they believe that Medicare's allowance for cataract surgery performed in an ASC is considerably less than current Medicare payment to hospitals of $1500 to $2000 per case for the same procedure performed on an outpatient basis.

Response: Congress enacted section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), which amended section 1833(a)(4) of the Act and added a new section 1833(i)(3) to the Act, to reduce this disparity, which is caused by the different methods of payment for similar surgical procedures performed in these two ambulatory settings. In addition, section 9343(f) of Pub. L. 99–509 requires the Secretary to develop a totally prospective payment system for outpatient surgery performed in hospitals and to submit a final report to Congress by April 1, 1989 containing recommendations concerning the implementation of this system for procedures performed on or after October 1, 1989.

Until a fully prospective hospital outpatient payment system is implemented, section 1833(i)(3) of the Act requires that the aggregate payment to a hospital for outpatient facility services furnished in connection with ASC approved procedures be the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by the applicable deductible and coinsurance amounts). This amount is referred to as the hospital-specific amount.
- An amount based on a blend of—

—The hospital-specific amount; and
—The amount that would be paid to a freestanding ASC for the same procedure in the same geographic area.

For hospital cost reporting periods beginning on or after October 1, 1987, the blend is 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount. For hospital cost reporting periods beginning on or after October 1, 1988, the blend changed to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount, except for certain eye and ear speciality hospitals excluded under the provisions of section 1833(i)(3)(B)(ii) of the Act, as added by section 4068 of Pub. L. 100–203. However, this blended method of payment could result in hospitals receiving a slightly higher IOL allowance than ASCs. Since there is no reason to believe that IOL acquisition costs are higher for hospitals than ASCs, we intend to propose the appropriateness of applying the ASC rate for IOLs as a cost limit for lenses furnished in the hospital outpatient setting. We believe that we have sufficient authority under section 1861(v)(1)(A) of the Act to establish limits on hospital outpatient reasonable costs. Therefore, we are preparing a proposed notice with comment period for publication in the **Federal Register**. That notice will announce any proposed changes to cap hospital outpatient IOL costs.

Comment: A large number of commenters stated that the methodology used to develop the rates was manipulated solely for budgetary reasons. The commenters allege that prior to publication of the proposed notice, a draft copy of the ASC payment rate proposal dated March 3, 1988 would have allowed an average rate increase of approximately 17.8 percent in contrast to the increase of 5.5 percent set forth in the August 18, 1988 proposed notice (53 FR 31468). They believe the methodology used in the March draft is more appropriate than that which appeared in the August proposed notice.

Response: In developing the ratesetting methodology used to calculate the proposed rates, we examined all reasonable options. Although we were cognizant of budgetary factors during our evaluation of various options, we believe that the methodology chosen and the resulting proposed rates comport with statutory requirements and represent a fair estimate of ASC allowances for facility overhead expenses based not only on audited aggregated cost and charge data but also on other data elements collected through the survey. We also considered the impact of our proposals on the number and types of ASCs that would be affected and the extent of any adverse effect on these facilities.

B. Inadequate IOL Allowance

Comment: Many commenters oppose our proposal to establish a single payment rate for IOLs. They contend that a single IOL rate does not comply with section 1833(i)(2)(A)(iii) of the Act, which mandates that the IOL payment amount be related to the class of lens involved in the implantation. Further, some of the commenters believe that use of a single rate ignores differences among classes of lenses attributable to differences in acquisition costs. They recommend adoption of a three-tiered payment system for IOLs that would distinguish payment based on whether the lens inserted during cataract surgery is a multi-piece, single piece, or advanced technology lens. In support of their recommendations, the commenters submitted information on patient benefits associated with the different classes of lenses.

In commenting on this issue, the Health Industry Manufacturer Association (HIMA) advised that there are approximately 40 different types of IOLs currently in use and that this number could increase ten-fold based on the current number of IOL manufacturers. However, HIMA claims that these 40 different types of IOLs can be classified into the three recommended classes that are generally recognized by ophthalmologists. HIMA provided us with the following information in earlier discussions of this issues.

The multi-piece lenses comprise about 80 percent of the market and are

constructed of three separate pieces (that is, one lens or optic and two loops or haptics). Single-piece lenses are approximately 19 percent of the market and their design blends the optic and haptics into one continuous piece. Advanced technology lenses represent about one percent of those currently in use. HIMA pointed out that the advanced technology IOL class includes those IOLs whose acquisition cost and patient benefits are significantly greater than those of multi-piece and single-piece lenses. Due to rapid changes in IOL technology, HIMA characterized this class of IOLs as including lenses with temporary status. HIMA has recommended an annual review process to determine which IOLs should be assigned to this group. Further, HIMA believes that small incision lenses and surface-coated or surface-modified lenses would currently qualify for categorization as advanced technology IOLs.

In the proposed notice, we requested that the public submit scientific evidence that shows whether one type of IOL is medically more beneficial than another (53 FR 31475). In commenting on the differences in patient benefits associated with different classes of lenses, some commenters submitted several clinical studies and referenced a number of others in their discussions. The material submitted stated that single-piece lenses are medically required by 9 to 10 percent of the cataract patients. These patients require anterior chamber implantation of the IOL and a large number of them would experience complications if a multi-piece lens is used. The commenters claimed that the single-piece lens significantly reduces problems such as sizing of the lens and damage to iris, cornea, and adjacent tissues.

The commenters also believe that the single-piece lens reduces the incidence of posterior capsular opacification, a complication associated with cataract extraction using the extracapsular technique and posterior chamber IOL implantation. Posterior capsular opacification causes visual impairment similar to that caused by cataracts and usually requires laser surgery. According to the clinical information submitted by commenters, the incidence of posterior capsular opacification ranged from 18 to 50 percent among patients followed postoperatively over a 3 to 5 year period. According to the documentation, reduction in the incidence of posterior capsular opacification is attributed to the fact that single-piece lenses restrict rapid reproduction of ocular cells because they, unlike their counterparts, stretch and adhere better to the posterior capsule.

Further, the commenters asserted that single-piece lenses reduce the incidence of edge glare, that is, blurred and distorted vision that may be caused by the movement of the lens from the center of the eye. The commenters believe that single-piece IOLs decrease decentation of the lens because they are more stable than multi-piece IOLs and remain well-centered in the lens chamber. In addition, they believe that the single-piece construction of lenses as one continuous unit decreases the existence of potential areas where debris could be deposited and where inflammation could occur.

Because single-piece IOLs may reduce the incidence of posterior capsular opacification and thus decrease the need for laser surgery to correct this condition, one commenter estimates that the use of single-piece IOLs could save the Medicare program about $29 million and beneficiaries approximately $8.5 million annually.

The commenters define small incision lenses as an advanced technology type. These lenses may be constructed of a soft foldable material and are inserted through an incision of 3 millimeters or less. The size of the incision is said to be about one-third the size of that required to insert conventional lenses. Some of the patient benefits attributed to the use of these lenses include—

- Decreased surgical time;
- Earlier visual rehabilitation;
- Faster postoperative recovery;
- Reduced risks of certain intraoperative complications such as hemorrhaging resulting in subsequent visual loss and injury to the operative eye caused by patient movement (for example, coughing or sneezing); and
- Minimized postoperative astigmatism (for example, enhanced visual quality in both eyes).

Material submitted by the commenters states that 38.5 percent of large-incision cataract patients receiving an IOL implant require the use of eyeglasses within 1 to 12 months following surgery to enhance vision due to postoperative astigmatism. However, the commenters claim that only 19.4 percent of small-incision cataract patients may require eyeglasses. Two commenters estimate that the Medicare program could save between $20 and $22 million annually if small incision lenses were used, thus eliminating the need for eyeglasses to correct postoperative astigmatism.

Surface-coated or surface-modified IOLs were cited as another example of high technology lenses. These include those lenses for which a chemical process is used to either coat the lens surface or remove microscopic surface irregularities of the IOL (that is, to eliminate surface energy and create a very smooth surface). Commenters stated that this process, for example, would create a protective barrier between the ocular cells and the IOL and lower the risk of ocular cells adhering to the implant thereby preventing long-term cell damage. Some of the patient benefits attributed to the use of this type of lens include a more compatible implant for diabetic and glaucoma patients, reduction in the incidence of posterior capsular opacification, and a decrease in the incidence of complications associated with the retina, cornea, iris, and adjacent ocular tissues.

One commenter estimates that use of surface-coated or surface-modified IOLs could save the Medicare program about $24 million and beneficiaries approximately $6 million annually through the reduced treatment costs associated with posterior capsular opacification and cornea complications.

Response: As stated in the proposed notice, we did not have sufficient evidence to determine if IOL payment distinctions based on class were appropriate. Therefore, we proposed a single payment rate for IOLs and asked the public to comment on the appropriateness of class distinctions. We also solicited scientific evidence that would show that one type of lens is medically more beneficial to Medicare beneficiaries than another. However, we do not believe the clinical studies submitted in response to our request demonstrate that there are medical reasons to support a differentiated price structure.

Individuals commenting on this issue generally believe that lens class distinctions are appropriate because of differences in costs among different lens styles that are generally classified as multi-piece, single-piece, and advanced technology lenses. However, we do not believe that the supporting documentation shows that there are specific clinical conditions that require the use of a specific type of lens. Further, the Food Drug Administration (FDA) has advised us that medical benefits of one group of lenses over another have not been proven.

Based on our analysis of the clinical studies submitted, we did not find that clinical reasons were the basis for choosing one type of lens over another for the conventional implant procedures. While the follow-up clinical studies

suggest that some of the one-piece and biconvex lenses have fewer long-term postoperative complications, these considerations, if valid, do not appear to be a determining factor in the surgeon's choice of lens. The FDA has found that the usual postoperative followup for patients with one-piece lenses is the same as the followup for multi-piece lenses.

In addition, we do not believe that it is necessarily the one-piece nature of the lens that is as critical as is the lens shape or the ability of the surgeon to prevent the body's inflammatory response to the lens itself. Moreover, FDA has approved single-piece lenses without any distinguishing claims of superiority over the multi-piece IOLs or other approved lenses. It has permitted the marketing of other styles to the extent that they are at least an equivalent product to the approved IOLs. It is not HCFA's intent to discourage development of improved technology lenses. Therefore, when and if lenses of differing characteristics, including clinical efficacy, are approved by FDA, we plan to consider whether changes in Medicare payment rates would be justified. We would, of course, in arriving at such judgments, consult with other government agencies that might have information on particular procedures or devices. We will notify the public of any revisions to our methodology for determining lens pricing.

Comment: A majority of commenters urged that we increase the proposed $200 allowance for IOLs. They claim that $200 is inadequate and not reasonably related to lens acquisition cost as required by statute. A number of commenters referenced two industry studies on IOL acquisition costs that were conducted by Ernst and Whinney and suggested that the IOL allowance be based on the findings of these studies.

One of the studies was commissioned by HIMA. The study recommended IOL allowances based on the 75th percentile of net acquisition costs as shown below. The study defined net acquisition cost as invoice cost less any manufacturer discounts, credits, or rebates. The study recommended the following amounts based on an analysis of acquisition costs of 124,000 IOLs sold in 1987 to 300 Medicare participating ASCs by six IOL manufacturers.

NET ACQUISITION COST

Class	Average	75th percentile
Multi-piece	$242.54	$305.00
Single-piece	299.64	368.75

NET ACQUISITION COST—Continued

Class	Average	75th percentile
Advanced Technology	411.61	425.00

HIMA agreed with the results of the study and suggested the study's methodology was a more accurate means of determining a reasonable payment amount as required by section 1833(i)(2) of the Act. HIMA stated that this method of reasonable cost determination is comparable to that used by the Medicare carrier in determining the reasonable charge for a Medicare Part B service. Further, this study supports HIMA's position regarding the establishment of a three-tiered payment system for IOLs that distinguishes payment based on whether the IOL inserted was a multi-piece, single-piece, or advanced technology lens. However, HIMA also suggested an alternate two-tiered payment system. Under this system, HIMA collapsed the single-piece and multi-piece IOLs into one class with an average net cost of $268 and retained the high technology lenses as a second distinct class.

The other study conducted by Ernst and Whinney was made at the request of OOSS and recommended that the proposed IOL payment allowance be increased as shown below. As discussed above, this study also recommended a three-level payment system based on whether an IOL is a multi-piece, single-piece, or advanced technology lens. These suggested amounts are based on Ernst and Whinney's review of the net acquisition cost (invoice cost minus all manufacturer discounts, rebates, and credits) of 14,507 lenses purchased by 30 ASCs. According to study findings, the weighted average net acquisition cost for all classes of lenses (weighted by volume) in the data base is $252.

Class	Weighted average net acquisition cost
Multi-piece	$243.00
Single-piece	262.00
Advanced Technology	425.00

In addition, one commenter recommended increasing the allowance to an amount between $254 and $268.

Response: As explained in our proposed notice, $200 represents the net average lens price paid by a subset of the sample ASCs reviewed in the OIG study which included ASCs that had negotiated lens prices with manufacturers. With respect to the suggestion that we establish a tiered level of payment for the IOL allowance, we have not received any evidence that shows that one type of lens is medically more beneficial to Medicare beneficiaries than another. (See the detailed discussion in the preceding response to comment.) Therefore, we have not provided for any distinction in price structure based on class. We are instituting a single-rate for all types of lenses implanted.

After carefully reviewing the two Ernst and Whinney studies, we believe that OIG's study is the best data source for determining a reasonable IOL allowance for Medicare participating ASCs. Both of the Ernst and Whinney studies were based on information reported by facilities, but the data in these studies were never audited. In our experience, unaudited data are inaccurate. Further, we believe that the sampling methodology and statistical approaches used in the Ernst and Whinney study contracted by OOSS are flawed. A major flaw in this study is the bias contained in the two-stage sampling process. It appears that the initial sample for the telephone survey (245 ASCs) and the subset of 30 ASCs selected for site visits were drawn from the total universe of 898 Medicare participating ASCs using a self-selection or nonrandom approach. While the study claims that each of the subsamples contains characteristics representative of the universe of ASCs, it does not indicate that valid sampling techniques were used to reduce the probability of any sampling bias. We believe that these flaws in sampling could result in misleading study findings that should not be extrapolated to all IOLs purchased by ASCs.

Conversely, we believe that OIG has gained a wealth of experience through prior study of the IOL industry and has vast knowledge of Medicare facility purchasing practices that is an asset in evaluating IOL buying arrangements within the ASC setting. While we recognize that OIG's findings are based on a smaller sample than those used in the two Ernst and Whinney studies, we are confident that OIG's sample methodology was appropriate to obtain a valid, random sample for use in determining a range of prices within an industry where discounts, special allowances, and certain questionable promotional practices have been a significant factor. For example, an article in the September 2, 1985 issue of Barron's National Business and Financial Weekly reported that IOLs cost $35 to $50 to manufacture, that identical lenses were sold in Europe at

half the price charged in the United States, and that a consortium of 38 hospitals had slashed their lens cost by as much as 80 percent by negotiating their prices with IOL vendors. Although this article is over 3 years old and may not reflect the effects of inflation or technology on the cost of producing IOLs in 1989, we believe it characterizes current trends within the IOL industry.

Further, in developing this final notice, we contacted a number of facilities regarding their lens acquisition cost. We found that a significant number of these facilities regularly purchase lenses for substantially less than $200 with some as low as $70 per lens. In this regard, the General Accounting Office in testifying before the Subcommittee on Health of the Committee on Ways and Means (April 10, 1989) stated "the fact that a Canadian hospital that we visited can negotiate an $80 lens price with an American manufacturer suggests that even $200 may be generous." Within the United States, we found that in some cases prices are discounted at least 50 percent below the list price. We believe that this information further validates the OIG findings and suggests that further study of IOL cost is appropriate. Furthermore, since the OIG report and GAO testimony before Congress suggest that a number of ASCs acquire IOLs at less than the $200 rate established in this notice, we will continue to collect data on IOL acquisition costs and purchasing arrangements to ensure that the IOL rate appropriately reflects lens acquisition costs. In this regard, the OIG plans to conduct a further study of IOL prices within and outside the United States. We intend to closely monitor this study, which is expected to be completed in early 1990, and will reconsider the IOL payment issue when these new data become available.

Comment: Some commenters believe the proposed $200 IOL allowance would act as a disincentive for further ophthalmologic innovation and could eliminate advance technology IOLs as an option for the Medicare beneficiaries undergoing cataract surgery.

Response: As stated above, we have not received any evidence that shows that one type of lens is medically more beneficial to Medicare beneficiaries than another. The choice of lens generally appears to be based solely on physician preference. For example, a leading professional publication recently reported that although 84.4 percent of the ophthalmic community use ultraviolet (UV) absorbing IOLs, a recent study did not show a significant difference between UV-blocking and non-UV-blocking IOLs ("UV-absorbing IOLs: More Study Needed," Ocular Surgery News, 1 February 1989, p. 4).

Thus, we believe that a $200 IOL allowance is sufficient to allow facilities to prudently purchase an appropriate type of IOL. Moreover, based on our knowledge of the IOL industry, we believe that ASCs can individually and collectively negotiate favorable lens prices with vendors.

C. IOL-Related Issues

Comment: One commenter suggested that we achieve cost savings on IOLs by paying ASCs the lower of the acquisition cost for the lenses or the IOL allowance.

Response: Section 4063(b) of Pub. L. 100–203 amended section 1833(i)(2)(A) of the Act to incorporate payment for IOLs furnished in the ASC setting under the same system as that used to determine payment for ASC facility services. The method of payment for services furnished in ASCs is a prospective payment system in which a rate is paid for a service without regard to an individual facility's costs. For example, if a facility's cost of providing a particular service is less than the allowance for that service, the excess is retained by the facility. Payment based on the lower of the IOL acquisition cost or the IOL allowance is appropriate only for cost-based payment systems that incorporate retroactive adjustments for excess costs and that do not recognize an opportunity for profit with respect to covered services furnished to Medicare beneficiaries.

Comment: Many commenters objected to HCFA's use of the survey conducted by OIG, which they characterized as seriously flawed. They stated that the report did not consider the cost and benefit of new technology lenses and ignored factors that affect the acquisition cost of IOLs to ASCs such as the lack of high volume purchasing by many facilities and locality differences among ASCs.

Response: While we acknowledge that OIG's findings are based on a smaller sample of ASCs than the samples used in the two Ernst and Whinney studies, we believe that OIG's sample design and methodology were appropriate to obtain a valid, random sample for use in determining a range of prices where industry discounts, special allowances, and certain questionable promotional practices have been a significant factor. Our recent independent inquiry into IOL prices and discounts among facilities within and outside the United States (as discussed in a previous response) and the aforementioned GAO study of IOLs support the OIG findings.

Comment: Several commenters stated that we should integrate the IOL allowance into the facility rate for the three cataract procedures involving a lens insertion (CPT–4 codes 66983, 66984, and 66985) rather than treat it as an add-on to the applicable group payment rate. They believe that use of an add-on is not consistent with Congressional intent that payment for the IOL be incorporated in the facility rate. Further, they believe that blending the IOL allowance into the facility rate would ensure annual review and update of the IOL payment allowance in the same manner as required for the payment rates for other facility services. In addition, they contend that the add-on is inappropriate because it gives the appearance of price control and would act as a disincentive for ophthalmologists to purchase the more expensive technological advancements.

Response: We created two distinct payment groups, Groups 6 and 8, and incorporated the IOL allowance into the two rates. Since procedure codes 66983 and 66984 are similar in cost and involve both the extraction of the cataract and implantation of an IOL, we have removed these two procedures from Group 6, established them as a separate Group 8, and folded the IOL allowance into the new Group 8 rate. However, our cost data indicate there is a substantial cost difference between procedure 66985, which involves insertion of an IOL only after the cataract has been previously removed, and the other two IOL procedures, which involve a single step procedure for cataract removal and insertion of an IOL. As a result, it fell into a lower proposed payment group, Group 5, than the other two procedures, which fell into proposed Group 6. Therefore, in a similar manner, we have removed procedure 66985 from Group 5, established it as a separate Group 6 and folded the IOL allowance into the new Group 6 rate. Because of these changes, those procedure codes that were assigned to proposed Group 6 (except for the procedures involving IOLs (procedure codes 66983 and 66984)) will now be moved to a new Group 7.

D. Technical Issues

Comment: Several commenters urged that the revised facility rates and new IOL allowance be implemented prospectively. They argued that retroactive application of these changes to July 1, 1988 would be administratively costly and burdensome to ASCs and IOL vendors as well as the Medicare carriers. Further, they believe that retroactive application of the rates would be confusing and frustrating to

the Medicare beneficiaries who are subject to deductible and coinsurance requirements for covered surgical procedures. Since the revised rates could be higher or lower than the current rates, depending on the procedure performed or the type of IOL inserted, they stated that retroactive application of the new rates would require an adjustment either higher or lower to the coinsurance already paid by the beneficiary.

Response: We agree and have revised the effective date accordingly.

Comment: A number of commenters took exception to our proposed use of the CPI–U to account for inflation in ASC costs. They believe that HCFA's hospital market basket index is a more appropriate measure of inflation than the CPI–U because of the similarity between costs incurred for surgery performed in the ambulatory setting and costs incurred for surgery performed on a hospital inpatient basis.

Response: As stated in our proposed notice, we examined a number of possible ways to adjust for inflation in ASC facility costs and determined that the CPI–U, as a generalized index, is the more appropriate index to use (53 FR 31471). While we are cognizant of similarities in surgical costs incurred by ASCs and hospitals, the mix of goods and services differ substantially. Because of this difference, we continue to believe that use of the hospital market basket index would have distorted the ASC payment rates.

As new and more accurate ASC data become available, we will be better able to determine the cost of goods and services necessary to perform surgery in the ambulatory setting and evaluate the appropriateness of developing an ASC specific market basket index.

Comment: Some commenters asserted that it is inappropriate to use a cost-to-charge ratio to estimate ASC facility costs. OOSS claimed that the study on cataract facility costs conducted by Ernst and Whinney found no correlation between facility charges and costs for cataract surgery.

Response: Section 1833(i)(2)(A)(i) of the Act requires that Medicare payments to ASCs be cost-related. However, the statute does not explicitly require a cost reporting mechanism. Since facilities report on a per procedure charge basis, we have used a cost-to-charge ratio to implement the requirement that payment be cost related. This approach is consistent with that used in the hospital outpatient setting, for example, to apportion costs between Medicare and non-Medicare patients, for determining Medicare liability for various ancillary services, or to determine the Medicare hospital outpatient cost for ASC services versus other hospital outpatient services.

Comment: Several commenters stated that if we are to use a cost-to-charge ratio, it would have been more appropriate to adopt a facility-specific cost-to-charge ratio rather than a weighted median cost-to-charge ratio based on the 90 audited facilities in our data base. They believe that use of a weighted median cost-to charge ratio should have been limited to only those ASCs for which data did not permit computation of their individual cost-to-charge ratio. These commenters argued that use of a cost-to charge ratio that is not facility-specific assumes that all ASCs should have the same cost-to-charge ratio and that the relationship between charges and cost is the same across all procedures.

Response: As stated above, we examined various options to our ratesetting methodology when developing our proposed notice. While we considered the use of a facility-specific cost-to-charge ratio, we believe that limitations inherent in our data base relative to reporting by nonaudited facilities (for example, underreporting of charges or the failure to properly report costs) preclude the use of a facility-specific cost-to charge ratio. Therefore, we believe that use of a cost-to charge ratio based on reporting by only the audited ASCs in our data base is more appropriate at this time. However, we plan to reevaluate this alternative when we collect new and more comparable survey data with our improved survey form.

Comment: A few commenters believe that there is a need for an ongoing collection of accurate procedure-specific ASC cost data. They suggested that future ratesetting methodology be based on the use of these data rather than the cost-to-charge methodology employed in the proposed notice. They also urged that we eliminate what they characterize as inaccurate estimates of Medicare utilization that they believe may have distorted our computation of weighted values.

Response: We share the commenters concerns over the collection of reliable and accurate date for ratesetting purposes. As stated above, we are planning to refine our survey form to permit the direct collection of Medicare utilization data on a procedure-specific basis in future periods. Further, we plan to explore the possibility of resource costing as an alternative to our ratesetting methodology.

Comment: Several commenters claimed that we provided no justification for our proposed use of $75 intervals as the basis for establishing the proposed six payment groups.

Response: In our proposed notice, we explained that our current four payment group system is based on an indexing method for ranking each procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered (53 FR 31470). Originally, this system was designed to classify only 400 procedure codes. When an additional 1200 procedures were covered in 1987, they were added to the existing four payment groups based on the clinical judgement of staff physicians rather than charge data. We further explained that our analysis of the per procedure charge data using survey data indicated that there were no common procedures that are offered by all facilities contained in the data base. Some centers performed only specialized procedures (for example, eye surgeries) while others did not perform these procedures at all.

Because of the wide variation found in types of procedures offered by the ASCs represented in our data base and the lack of common procedures furnished by all ASCs, we believe the indexing method is no longer effective in constructing a classification system. Instead, we devised a classification system based on $75 intervals of the weighted median per procedure cost. The use of $75 fixed intervals to define the groups assures that the group interval is equal in size between all groups and that there is sufficient volume of services in each group to be statistically supportable. Since the effect of the grouper is on procedural costs, we believe that a $75 interval is reasonable, is effective in distributing the weighted median per procedure costs, and results in the assignment of similar costs to the same payment group. Thus, we believe that this is a more appropriate method to control the effects of cost and efficiency differences across procedure codes and across facilities than other alternatives explored.

E. Payment Group Reclassifications

Comment: Some commenters, including the American Academy of Ophthalmology, recommended the following 95 procedures for assignment to a higher payment group. Of this number, 44 are eye procedures.

11401, 26122, 29870, 29874, 29875, 29876, 29877, 29881, 29887, 30116, 30118, 30915, 30920, 31031, 31505, 31560, 31561, 37721, 37731, 38555, 42408, 42440, 42507, 42508, 42509, 43227, 43235, 43255, 43258, 45368, 45382, 52000, 52276, 52281, 52335, 52601, 54900, 54901, 57268, 57520, 57820, 58120, 61101, 64721, 65091, 65110, 65130, 65235, 65245,

65200, 65265, 65285, 65800, 65805, 65810, 65865, 65900, 66150, 66165, 66170, 66220, 66225, 66250, 66700, 66762, 66800, 66801, 66915, 67005, 67010, 67015, 67025, 67030, 67036, 67101, 67107, 67108, 67400, 67405, 67412, 67413, 67720, 67906, 67935, 68500, 68505, 68745, 68750, 69140, 69661, 69666, 69667, 69720, 69740, 69745

Response: Our staff physicians carefully reviewed these recommendations and supporting documentation submitted by commenters. Based on their clinical judgement, we have reclassified 66 of the 95 procedures to a higher payment category as shown below. However, our consultants determined that placement of the other 29 procedures in a higher payment group would be inappropriate based on the classification of similar procedures and their further analysis of ASC cost data. The reclassified procedures follow:

Procedure code	Payment group	
	Proposed	Final
26122	3	4
9870	2	3
29881	3	4
37721	3	4
37731	3	4
38555	3	4
30118	2	3
30915	1	2
30920	2	3
31560	1	5
31561	2	5
42440	2	3
42507	2	3
42508	3	4
42509	3	4
69140	1	2
69666	2	4
69667	3	4
69720	2	5
69725	2	5
69740	2	5
69745	2	5
52276	2	3
52335	2	3
52601	3	4
54900	2	4
54901	2	4
57268	2	3
65245	2	3
65260	2	3
65265	3	4
66150	2	4
66155	2	4
66165	2	4
66170	2	4
67101	3	4
67107	3	5
67108	3	5
67109	3	5
65110	3	5
65810	2	3
65900	4	5
66220	2	3
66225	3	4
66250	1	2
66700	1	2
66701	1	2
66915	2	3
67005	3	4
67010	3	4
67036	3	4
67218	3	5
67250	1	3
67255	2	3
67400	2	3
67405	3	4
67412	3	5
67906	3	5
67035	1	2
68500	1	3
68505	1	3
68720	3	4
68745	3	4
68750	3	4
45368	1	3
43258	2	3

Comment: A number of commenters believe that 30 procedures were inaccurately assigned to too high a payment group and that they should be placed in a lower payment group.

Response: After close review of the documentation submitted by these commenters, the classification of similar procedures and available ASC cost data, our staff physicians have reclassified all 30 procedures to lower payment groups as indicated below.

Procedure code	Payment group	
	Proposed	Final
19101	3	2
25066	4	2
26055	3	2
26120	4	3
27040	2	1
28290	4	2
28292	4	2
28293	5	2
28294	6	3
28296	5	3
30140	3	2
31020	3	2
31505	2	1
41110	2	1
52000	2	1
53600	2	1
54505	3	1
54506	3	2
54860	4	3
54861	5	4
56440	3	2
58930	4	3
64774	3	2
65093	6	3
65103	4	3
65800	2	1
65805	2	1
67914	3	1
67921	3	1
69420	2	1

With this notice we are including eight codes that were not included in our proposed notice. Six of the codes [29871, 29872, 29879, 29882, 29884, and 29886] describe various arthroscopic knee procedures. Arthroscopic knee procedures have been on the list of covered ASC procedures since 1982. In the 1986 CPT–4 revision, the codes for these procedures were renumbered and six of them were inadvertently left off the list. The seventh code, 40652 "Repair lip, full thickness; up to half vertical height", should have been included in the April 21, 1987 **Federal Register** notice (52 FR 13176) that expanded the list of covered services. That notice included codes 40650 "Repair lip, full thickness; vermillion only" and 40654 "Repair lip, full thickness; over one-half vertical height or complex". Code 40652 was not included due to an oversight. Likewise, as a result of an oversight, the eighth code, 45383 "Colonoscopy, fiberoptic, beyond splenic flexure; for ablation of tumor", was not included with the five other colonoscopy procedures that were announced in the April 21, 1987 **Federal Register** notice.

In addition to these changes, we have revised the list of covered surgical procedure codes shown in Addendum A to conform to the 1988 and 1989 CPT–4 code editions as published by the American Medical Association (AMA). Medical nomenclature and procedural coding are a rapidly changing field as new procedures are developed, old procedures become obsolete, and existing procedures are modified to reflect changes in medical practice. In an effort to keep up with the most current "state-of-the-art", the AMA revises and publishes CPT–4 on an annual basis. The changes that appear each year are prepared by the CPT–4 Editorial Panel with the assistance of physicians representing all specialties of medicine. The types of changes that most commonly occur are revisions in terminology of existing codes, deletions of existing codes, and additions of new codes. Infrequently, these changes will affect the ASC list of covered services. In 1988, there were 584 changes in CPT–4. Of these, 23 changes were revisions in terminology of procedures on the current list. These procedure codes will remain on the list of covered services. An additional eight codes that were on the list of covered services were deleted from CPT–4. A summary of our decisions regarding the reporting of these services follows.

1. *21061:* This code described a bilateral tempero-mandibular joint procedure. To report the performance of this procedure, an ASC should list the corresponding unilateral procedure code (21060) twice. Code 21060 is currently on the list of covered services

2. *45181:* This code described a type of excision of a malignant rectal tumor. A note in the 1988 CPT–4 states "45181 has been deleted. To report, use 45180." Since 45180 is on the list of covered services, the deletion of 45181 has no

practical effect on payment for the service.

3. *45360, 45365, 45367, 45368, and 45370:* These codes describe various colonoscopy procedures of the descending colon. A note in the 1988 CPT–4 states "45360–45372 have been deleted. To report these procedures, use codes 45330–45337." None of the codes in the range of 45330–45337 is on the current list of covered ASC procedures. We reviewed 1987 Part B Medicare Annual Data file to determine the frequency with which they are performed on an inpatient basis and in physicians' offices. As described in greater detail on April 21, 1987 in the **Federal Register** (52 FR 13178), we have established threshold levels that must be met in order for a procedure to be placed on the ASC list. Procedures performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices may qualify for addition to the list. Codes 45331, 45333, and 45334 meet these threshold criteria and will be added. Finally, the code that corresponds to deleted code 45360 is 45330, signoidoscopy, flexible fiberoptic; diagnostic and the code that corresponds to deleted code 45367 is 45332, signoidoscopy, flexible fiberoptic for removal of foreign body. These codes will not be added to the list because the data indicate that they are performed more than 50 percent of the time in physicians' offices.

4. *66945.* This code described the removal of a lens by an atypical approach. A note in CPT–4 states "66945 has been deleted. To report, see 66920–66940." Since the 3 codes in this range (66920, 66930, and 66940) are all on the current list of covered services, the deletion of code 66945 has no practical effect on payment for the service.

In 1989, there were 230 changes in CPT–4. Of these, 33 changes were revisions in terminology. These procedure codes will remain on the list of covered services. An additional four codes that were on the list of covered services were deleted from CPT–4. In the 1988 CPT–4, there were separate codes for two types of corneal transplants (lamellar and penetrating) that were differentiated further based on whether the transplant was performed with: (1) An autograft; (2) a homograft, fresh; or (3) a homograft, preserved. The three graft types were all combined so that the reporting of either type of corneal transplant (lamellar or penetrating) would be under a single code regardless of the graft source. Since the two codes into which the deleted codes were collapsed are already on the list, the deletion of codes 65720, 65725, 65740, and 65745 has no practical effect on payment for the services.

Future changes in CPT–4 (that is, 1990 and beyond) are likely to have some effect on the list of covered ASC procedures. Revisions in terminology will be incorporated into the list. The additions of new codes that represent minor variations of codes that are already on the list of covered services will be added to the list. When codes that are on the current list are deleted, we will attempt to cross-refer those deletions to other CPT–4 codes. If those other codes are already on the list, there will be no effect on payment. If the deletion notice in CPT–4 indicates that the reporting of a procedure whose code was deleted should be with a code that is not on the ASC list, we will add that code to the list if our most current data indicate that it is commonly furnished on an inpatient basis but, not commonly furnished in a physician's office.

1988 Changes

The AMA revised the procedure terminology for each of the following covered procedures. Refer to Addendum A of this final notice for the revised descriptors.

20661	27327	50957
21050	29875	50976
21060	31515	62274
21555	43258	64787
21556	44369	66830
24076	45180	69633
26520	49400	69637
27047	50576	

1989 Changes

The AMA revised the procedure terminology for each of the following covered procedures. Refer to Addendum A of this final notice for the revised descriptors.

11200, 24101, 25040, 26070, 26115, 26160, 26392, 27620, 28080, 28114, 28120, 28122, 28240, 28306, 40831, 43220, 43228, 43260, 49000, 50553, 50572, 50953, 50972, 62278, 62279, 62289, 64702, 64704, 64708, 64716, 64727, 65710, 65730

V. Final Payment Rates

As discussed above in the responses to public comments, this final notice establishes eight payment groups rather than the six proposed groups. The two new groups reflect our decision to blend the IOL allowance into the three cataract procedure codes. Procedure codes 66983 and 66984 are established as a new Group 8 and procedure code 66985 is established as a new Group 6. Proposed Group 6 is now Group 7.

The final ASC facility payment rate ratesetting methodology results in payment rates as set forth below. However, for purposes of payment, these rates will not be applied because they are superseded by the updated rates that are published elsewhere in this issue of the **Federal Register** in a notice with comment period.

Group 1—$247
Group 2—$332
Group 3—$381
Group 4—$469
Group 5—$535
Group 6 $705 ($505 + $200)
Group 7—$743
Group 8—$814 ($614 + $200)

The rates in Groups 1 through 4 are slightly different from those in the proposed notice because of further refinement to our rate-setting methodology. That is, we eliminated the use of weighted median rates rounded to the nearest ten dollars. Since this step could be perceived as being arbitrary and capricious and would have the effect of rounding down the actual computed rates in proposed Groups 2 and 3, we eliminated its use. Instead we have rounded all rates only to the nearest dollar.

Further, we have removed from our data base an additional 45 procedures whose costs are aberrant and assigned them to the appropriate payment group based on the clinical judgment of our staff physicians. As discussed above, this change was prompted by comments from the industry regarding the recommended reclassification of 125 procedures. Of this number, 96 procedures were reassigned to a payment group different from that proposed. Since the payment group classification proposed for 51 of these procedures was determined by our consultants based either on the nonavailability of cost data or abnormal costs associated with these procedures, their costs were not used to calculate the proposed rates. Therefore, consistent with this practice, we eliminated abnormal costs associated with the 45 additional reclassifications in calculating the rates for this final notice. As a result, the data base used to derive the final rates is based on the weighted median wage adjusted costs and volume for 567 procedures rather than 612 procedures as used to develop the proposed rates. (The proposed notice incorrectly stated there were 614 procedures.) This change resulted in the slight shifting of volume within two groups that largely contributed to the rate increase for Group 2 and Group 4.

The larger increase in the Group 5 and Group 7 rates (proposed Groups 5 and 6) is caused by the removal of the three cataract procedures: 66983, 66984, and 66985. We have established these three

procedures as two distinct payment groups—Group 6 and Group 8. Since our rate-setting methodology is based on weighting and these cataract procedures are relatively high volume, they heavily influenced the payment rate for the proposed Group 5 and Group 6. Therefore, this volume change in the new Group 5 and the new Group 7 results in a higher rate than that proposed ($500 and $620, respectively).

In addition, this final notice uses a wage index different from that proposed to standardize the rates for wage variation across geographical areas. Rather than adopt the proposed index that was applied to hospital discharges occurring on or after October 1, 1987 and before October 1, 1988, we believe it more appropriate to implement the wage index published in the September 1, 1989 hospital prospective payment final rule (54 FR 36452). This updated index is used to determine prospective payments to hospitals beginning October 1, 1989. We believe the FY 1990 index represents the latest and most accurate index available for calculating ASC facility payment rates. However, in adopting this new HCFA wage index, we had to determine appropriate wage index values for certain rural counties in which there are no prospective payment hospitals. That is, in the September 30, 1988 hospital prospective payment final rule, which set forth the FY 1989 changes to the hospital prospective payment system, we provided that, if certain conditions are met, the Secretary would treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban area to which the greatest number of workers in the county commute as provided under section 1886(d)(8) of the Act (53 FR 38499). Because of this provision, as a part of the September 30, 1988 final rule, we reclassified the wage data for those rural areas as if the hospitals in those areas were located in the adjacent MSAs and recomputed the wage index values for the affected MSAs and rural areas.

Because inclusion of the wage data from rural hospitals that are considered to be located in an adjacent MSA under section 1886(d)(8)(B) of the Act resulted in the reduction of the wage index values of several MSAs and rural areas, Congress enacted section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647). Under that provision, which added a new section 1886(d)(8)(C) to the Act, if the inclusion of wage data from rural hospitals now considered to be located in an urban area results in a reduction of the wage value for the affected MSA or rural area, then the wage index values for those affected areas must be recomputed as if section 1886(d)(8)(B) of the Act had not been enacted. The wage index value for those rural counties with hospitals that were deemed urban and that are affected by this recomputation must be calculated separately. This provision is effective for discharges occurring on or after October 1, 1989 and before October 1, 1991.

Therefore, as explained in the September 1, 1989 final rule (54 FR 36477), we provided that each county whose hospitals have been deemed to be located in an MSA whose wage index value had been reduced because of inclusion of the wage data from rural hospitals in the adjacent county would have its own unique wage index value, that is, a wage index value calculated on a county-specific basis. However, in eight of these counties there are no prospective payment hospitals so a county-specific hospital wage index value could not be calculated. Therefore, for purposes of calculating the ASC facility payment rates only, for the following eight counties whose hospitals are considered to be located in an adjacent urban area, we are applying the wage index of that adjacent urban area:

- Owen, IN in the Bloomington, IN MSA.
- Cass, NE in the Omaha. NE MSA.
- Caswell, NC in the Danville, VA MSA.
- Currituck, NC in the Norfolk-Virginia Beach-Newport News, VA MSA.
- Preble, OH in the Dayton-Springfield, OH MSA.
- Isle of Wight, VA in the Norfolk-Virginia Beach-Newport News, VA MSA.
- Spotsylvania, VA in the Washington, DC-MD-VA MSA.
- Lincoln, WV in the Charleston, WV MSA.

While inplementation of this updated wage index has the effect of reducing payment for two cataract procedures (66983 and 66984) by as much as $6.00 below the proposed payment group rate, our analysis indicates that on average the overall rate of increase in the facility payment rates is reduced by only 0.2 percent. Therefore, we do not believe that adoption of the new wage index has a significant impact on the updated payment rates.

The following are examples of calculations of an individual ASC's payment rates.

1. The following is an example of how the payment would be determined for a procedure in Group 4 ($469) performed in an ASC located in Detroit, Michigan. The appropriate HCFA wage index value is 1.0784. The labor-related portion of the payment is 0.3445 and the non-labor-related portion is 0.6555.

Wage Adjusted Rate

$=[(\$469\times.3445)\times1.0784]+(\$469\times.6555)$
$=(\$161.57\times1.0784)+\$307.43$
$=\$174.24+\$307.43$
$=\$481.67$

The steps set forth in this example may be used for calculating payment rates for Groups 1 through 5 and Group 7 (that is, the groups whose payment rate do not include an allowance for IOLs).

2. The following is an example of how the payment would be determined for the two procedures in Group 8 ($814) performed in an ASC located in Detroit, Michigan. Since the IOL allowance is not subject to the labor adjustment, the $200 allowance must be subtracted from the composite rate ($814) before adjusting for labor variation. The steps set forth in this example should also be used in calculating the payment amount for the one procedure in Group 6.

Wage Adjusted Rate

$=[(\$814-\$200)\times.3445\times1.0784]+[(\$814-\$200)\times.6555]$
$=[(\$614\times.3445)\times1.0784]+(\$614\times.6555)$
$=(\$211.52\times1.0784)+\$402.48$
$=\$228.10+\$402.48$
$=\$630.58$

Composite Adjusted Rate

$=\$630.58+\$200$
$=\$830.58$

The payment rate methodology and lens allowance set forth in this final notice will be applied to services furnished on or after March 12, 1990. Published elsewhere in this issue of the **Federal Register** is a notice with comment updating the ASC facility payment rates that are set forth in this final notice for ASC services. That notice with comment period is also effective for services that are furnished on or after March 12, 1990. We note that on June 1, 1989 we published a final notice (54 FR 23540) that deleted 48 procedure codes from and added one new procedure code to the list of covered ASC procedures. The 48 codes were deleted as of August 30, 1989. Therefore, as of that date, an ASC payment is no longer made for these procedures. The newly covered procedure, procedure code 67105, Repair of retinal detachment, photocoagulation (laser or xenon arc, one or more sessions) with drainage of subretinal fluid, was added to the list as of July 3, 1989. We assigned that code to new payment Group 5. Thus, as of July 3,

1989, payment is made for procedure code 67105 at the Group 5 payment rate.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice such as this one that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ASCs and hospitals as small entities.

Also, section 1102(b) of the Social Security Act reguires the Secretary to prepare a regulatory impact analysis for any final notice such as this one that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

The following discussion, in combination with the rest of this final notice, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

B. Program Costs

1. Payments to ASCs

As a direct result of increasing payment rates for procedures performed in ASCs, we project an average increase in payments per case to ASCs of approximately 5.3 percent. This increase reflects the new payment rates exclusive of the $200 payment for an IOL that is included in the payment amounts in Groups 6 and 8 compared to the previous payment rates.

Table I, below, displays the projected effects of the rates from FY 1990 through FY 1994.

TABLE I.—PROJECTED MEDICARE COSTS AS A RESULT OF FINAL ASC RATES

[In millions]*

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
$10	$20	$20	$20	$20

* Rounded to the nearest $10 million.

2. Payments for IOLs in ASCs

In calculating the effect of the new $200 payment allowance for an IOL furnished in connection with a cataract procedure falling into payment Groups 6 or 8, we compared the new IOL payment amount to the estimated average amount we were paying for an IOL. As explained in the proposed notice, we estimated that, on average, Medicare paid ASCs $350 for an IOL. Table II shows the estimated savings from FY 1990 through FY 1994 as a result of the $200 IOL payment allowance.

TABLE II.—PROJECTED MEDICARE SAVINGS AS A RESULT OF THE $200 IOL ALLOWANCE

[In millions]*

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
$30	$50	$60	$50	$70

* Rounded to the nearest $10 million.

3. Payments for ASC Covered Procedures Performed in Hospitals on an Outpatient Basis

a. *Payment Methodology.* Section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended section 1833(a)(4) of the Act and added section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for services approved to be performed in ASCs, but performed in hospitals on an outpatient basis, is to be based in the aggregate on a comparison between two amounts. The payment is to be the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by deductibles and coinsurance).
- An amount based on a blend of—

—The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act reduced by deductibles and coinsurance (called the hospital-specific amount); and

—The amount paid to a freestanding ASC for the same procedure in the same geographic area in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount net of deductibles (the ASC amount).

Section 1833(i)(3)(B) of the Act further specifies that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is to be determined by using 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is to be based on 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

Furthermore, section 4063(b) of Pub. L. 100-203 amended section 1833(i)(2)(A) of the Act to include a standard payment amount for IOLs furnished in an ASC. Therefore, we will base the ASC amount of the blend for the furnishing of an IOL in connection with a hospital outpatient cataract procedure on the same amount of $200 that we will pay for an IOL furnished in an ASC. That is, we will include in the payment for a cataract procedure involving insertion of an IOL an additional amount based on the payment methodology for ASC procedures performed in a hospital outpatient setting as described above.

b. *Impact of ASC Rates on Payments for Hospital Outpatient Services.* For purposes of the following impact analysis, we assumed that payment determinations are based on a payment limit of 50 percent of the wage-adjusted ASC payment rate and 50 percent of the hospital-specific amount. Thus, we compared current payments under the previous rates based on a blend of 50 percent ASC rates and 50 percent hospital-specific amounts with payments using the new ASC rates and the same blend of ASC and hospital-specific amounts.

In this final analysis, we have revised our method of determining the impact of the payment policies on hospital payments. We have made a change in the impact methodology so as to more accurately reflect the effects of the new policies and to more closely simulate the actual method of paying hospitals for ASC procedures performed in hospital outpatient settings.

In the initial impact analysis of hospital outpatient payments for approved ASC procedures we conducted a separate impact analysis of the proposed ASC procedure rates and of the proposed payment allowance for IOLs. We chose this approach so that we could distinguish the upward effect

on hospital payments of the proposed changes in the ASC payment rates from the downward effect on hospital payments of the proposed payment allowance for IOLs.

The drawback to this approach is that it fails to recognize the combined effects of the two payment provisions. As we explained in the proposed notice, we estimated that currently the average Medicare IOL payment is $350. Thus, calculating a blended payment limit based on a 50 percent blend of the $200 IOL payment allowance and 50 percent of the hospital-specific amount ($350), produces an approximately 21 percent payment decrease for the IOL alone compared to the previous policy that paid the hospital's IOL acquisition cost. However, if a hospital's costs for performing the procedures (without regard to the cost of the IOL) are less than the new blended payment limit, then the combined impact of the new ASC rates and IOL allowance will be less severe than their effects examined separately. The following example illustrates the different outcomes of the two analytical approaches.

Example: A hospital has allowable facility costs of $610 for performing either one of the two cataract procedures in new Group 8 (old Group 4 plus $150). Adding $350 for the IOL acquisition cost, the average cost for the procedure and IOL is $960.

1. The payment determination using the old payment rates would be the lower of the hospital's costs (we assume that cost are less than charges) or a 50 percent blend of the ASC rate and the hospital-specific amount.

$$\text{Payment limit} = \frac{\$599}{2} + \frac{\$610}{2} = \$604.50$$

Old payment = ($604.50 + $350) = 954.50

2. Payment determination using the new payment rates.

a. Computing IOL and procedure payments separately:

$$\text{The procedure limit} = \frac{\$614}{2} + \frac{\$610}{2} = \$612$$

$$\text{The IOL limit} = \frac{\$200}{2} + \frac{\$350}{2} = \$275$$

The hospital would receive a total payment of $610 (its costs) + $275 = $885 or 7.3 percent less than it received under the previous rates.

b. Computing IOL and procedure payments together.

$$\text{The combined limit:} \frac{\$814}{2} + \frac{\$960}{2} = \$887$$

The hospital would receive a combined payment of $887.

It should be clear from the forgoing example that the outcome of calculating separate impacts for the ASC procedure and IOL payments may be significantly different from the outcome of an analysis that combines the two payment elements. In addition to distorting the effects of the new payment policies, splitting the hospital payment calculation between the surgical procedure amount and the IOL payment allowance does not accurately simulate the actual payment method.

Payment determinations are made on the basis of the combined costs for both the facility cost of the procedure and the IOL compared against either the combined charges or the payment limit that is also determined on the basis of either the total combined facility costs or charges. Thus, in contrast to the initial impact analysis presented in the proposed notice, which showed separate analyses of the ASC rates and the IOL payment allowance, this final analysis of the new payment policies shown in Table III combines the ASC rates and the IOL allowance as they will apply to hospitals for performing ASC approved procedures. The resulting savings to the Medicare program is largely the result of the decrease in the IOL payment allowance from the estimated average payment of $350 to an average $275 per IOL. When combined, the reduction in payments for IOLs overshadows the increase in hospital payments attributable to the higher payment rates.

It should be noted that although the average increase in the ASC rates is about 5.3 percent, the effect on hospital payments is diluted as follows:

- Most hospitals are being paid on the basis of the 50 percent blended payment limit, which reduces the increase by half.
- The ASC portion of the blended payment equals less than half of the hospital's payment in many cases. The actual percentage increase in payment is equal to the ratio of the ASC payment amount to the total payment amount multiplied by 5.3 percent.
- The 5.3 percent increase in overall ASC rates is based on the distribution of cases among the eight categories performed in ASCs. Because the distribution of cases in hospital settings may differ significantly from ASCs, the actual amount of the increase in hospital payments will also differ. Depending on the mix of ASC procedures treated in a hospital outpatient setting, the overall increase in the ASC rates used in calculating hospital payments may be greater or less than 5.3 percent.
- For the few hospitals being paid on the basis of costs or charges, the increase in the ASC rates will have no impact on the hospital's payments.

TABLE III.—ESTIMATED MEDICARE PROGRAM SAVINGS FOR HOSPITAL OUTPATIENT SERVICES RESULTING FROM NEW ASC PAYMENT RATES

[in millions] [1]

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
$30	$40	$50	$60	$70

[1] Rounded to the nearest $10 million.

4. Impact on Small Rural Hospitals

In a separate analysis that examined the distributive effects of the change in ASC rates over hospitals grouped by bed size and location in rural or urban locales, we found that, on average, small rural hospitals grouped by bed size and location in rural or urban locales, we found that, on average, small rural hospitals will experience a slightly smaller decline in their payments than will all hospitals on average. For both small rural hospitals and all hospitals, we compared the average payment per case using the new ASC rates to the average payment per case using the old set of ASC rates. The analysis showed that, on average, all hospitals will receive an approximately 3.1 percent reduction in their payments per case while small rural hospitals would receive an approximately 3.0 reduction in payments.

In assessing the impact of the new ASC payment methodology and rates on payments to all hospitals, readers must remember that these changes will only apply to payments for ASC procedures performed in hospital outpatient settings. Thus the 3 percent reduction applies to less than 11 percent of total Medicare payments made to hospitals.

C. Conclusion

Overall, the Medicare program will achieve savings from the revised payment rates and IOL allowance that are being implemented with this final notice. However, almost all of the projected savings are a result of the $200 payment allowance for IOLs. We will pay an ASC this amount for each IOL it supplies and a hospital a blend of $200 and the hospital-specific amount for each IOL it furnishes in connection with a cataract procedure performed in the hospital's outpatient department. We expect that, as a result of the new IOL payment allowance, hospitals will seek to pay lower prices for their IOLs. Where this is not possible, we believe that some hospitals may limit the number of cataract procedures performed at the hospital that involve the insertion of an IOL.

In general, however, we believe that our new rates accurately reflect and compensate hospitals and ASCs for the resources consumed in the course of providing surgical services to Medicare beneficiaries and will assure continued access for beneficiaries to these types of facilities.

VII. Paperwork Reduction Act

This final notice will not impose information collection requirements. Consequently, it need not be reviewed by OMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(Sections 1832(a) and 1833(i) of the Social Security Act (42 U.S.C. 1395k(a) and 1395l(i)); 42 CFR 416.120 and 416.130)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplemental Medical Insurance)

Dated: June 8, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 7, 1989.

Louis W. Sullivan,

Secretary.

Note: This document is being sent to the Office of the Federal Register today February 1, 1990 for publication.

Addenda

Addendum A—List of Covered Surgical Procedures

Note:

- Procedure codes preceded by an asterisk indicate that the procedure has been covered since August 5, 1982.
- Procedure codes without an asterisk indicate additions to the list of surgical procedures which were covered effective May 21, 1987.
- Procedure Codes preceded by a plus sign (+) indicate the procedure has been assigned to the payment group based on the clinical judgement of our staff physicians. The covered procedures, listed by body system and payment, together with applicable T–4 codes, are as follows:

	Payment groups		
	Old	New	
			Integumentary system
Incision			Skin, Subcutaneous and Areolar Tissues.
10141	2	2	Incision and drainage of hematoma; complicated.
Excision debridement			
11042	1	2	Debridement; skin, and subcutaneous tissue.
11043	1	2	Debridement; skin, subcutaneous tissue, and muscle.
11044	1	2	Debridement; skin, subcutaneous tissue, muscle, and bone.
Excision—benign lesions			
*11200	1	2	Excision, (including simple closure or ligature strangulation) skin tags, multiple fibrocutaneous tags, any area; up to 15.
*11201	1	1	each additional ten lesions.
*11401	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.6 to 1.0 cm.
*11402	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 1.1 to 2.0 cm.
*11403	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 2.1 to 3.0 cm.
*11404	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 3.1 to 4.0 cm.
*11406	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter over 4.0 cm.
*11421	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 0.6 to 1.0 cm.
*11422	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 1.1 to 2.0 cm.
*11423	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 2.1 to 3.0 cm.
*11424	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
*11426	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm.
*11441	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.6 to 1.0 cm.
*11442	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 1.1 to 2.0 cm.
*11443	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 2.1 to 3.0 cm.
*11444	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 3.1 to 4.0 cm.

	Payment groups		
	Old	New	
†*11446	1	2	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter over 4.0 cm.
*11471	2	2	Excision of skin and subcutaneous tissue for hidradenitis, perianal, perineal, or umbilical; with other closure.
Excision—malignant lesions			
†*11600	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 0.5 cm or less.
*11601	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 0.6 to 1.0 cm.
*11602	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 1.1 to 2.0 cm.
*11603	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 2.1 to 3.0 cm.
*11604	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 3.1 to 4.0 cm.
†*11606	2	2	Excision, malignant lesion, trunk, arms, or legs; lesion diameter over 4.0 cm.
†*11620	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.5 cm or less.
*11621	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.6 to 1.0 cm.
†*11622	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 1.1 to 2.0 cm.
*11623	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 2.1 to 3.0 cm.
†*11624	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
†*11626	2	2	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm.
†*11640	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.5 cm or less.
†*11641	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.6 to 1.0 cm.
*11642	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 1.1 to 2.0 cm.
*11643	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 2.1 to 3.0 cm.
*11644	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 3.1 to 4.0 cm.
*11646	2	2	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter over 4.0 cm.
			Nails
*11750	1	1	Excision of nail and nail matrix, partial or complete, (e.g., ingrown or deformed nail) for permanent removal.
			Miscellaneous
*11770	3	3	Excision of pilonidal cyst or sinus; simple.
†*11771	3	3	Excision of pilonidal cyst or sinus; extensive.
11772	3	3	Excision of pilonidal cyst or sinus; complicated.
Repair—simple			
12006	2	2	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 20.1 cm to 30.0 cm.
12007	2	2	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); over 30.0 cm.
12017	2	2	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm.
12018	2	2	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm. Repair—intermediate
†12036	2	2	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 20.1 cm to 30.0 cm.
12037	2	2	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); over 30.0 cm.
†12046	2	2	Layer closure of wounds of neck, hands, feet and/or external genitalia; 20.1 cm to 30.0 cm.
†12047	2	2	Layer closure of wounds of neck, hands, feet and/or external genitalia; over 30.0 cm.
†12056	2	2	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm.
†12057	2	2	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm.
Repair—complex			
13101	1	2	Repair, complex, trunk; 2.6 cm to 7.5 cm.
13121	1	3	Repair, complex, scalp, arms, and/or legs; 2.6 cm to 7.5 cm.
†13132	2	3	Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 2.6 cm to 7.5 cm.
†13152	3	3	Repair, complex, eyelids, nose, ears, and/or lips; 2.6 cm to 7.5 cm.
13300	3	4	Repair, unusual, complicated, over 7.5 cm, any area.
Adjacent tissue transfer or rearrangement			
14001	3	3	Adjacent tissue transfer or rearrangement, trunk; defect 10.1 sq cm to 30.0 sq cm.
14020	3	3	Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10 sq cm or less.
14021	3	3	Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10.1 sq cm to 30.0 sq cm.
†14041	3	3	Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10.1 sq cm to 30.0 sq cm.
14060	3	3	Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10 sq cm or less.
†14061	3	3	Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10.1 sq cm to 30.0 sq cm.
†14300	3	4	Adjacent tissue transfer or rearrangement, more than 30 sq cm, unusual or complicated, any area.
†14350	3	3	Filleted finger or toe flap, including preparation of recipient site.
Free skin grafts			
*15000	3	2	Excisional preparation or creation of recipient site by excision of essentially intact skin (including subcutaneous tissues), scar, or other lesion prior to repair with free skin graft (list as separate service in addition to skin graft).
*15050	3	2	Pinch graft, single or multiple, to cover small ulcer, tip of digit, or other minimal open area (except on face), up to defect size 2 cm diameter.
*15100	3	2	Split graft, trunk, scalp, arms, legs, hands, and/or feet (except multiple digits); 100 sq cm or less, or each one percent of body area of infants and children (except 15050).
*15101	3	3	Split graft, trunk, scalp, arms, legs, hands, and/or feet (except multiple digits); each additional 100 sq cm, or each one percent body area of infants and children, or part thereof.
*15200	3	3	Full thickness graft, free, including direct closure of donor site, trunk; 20 sq cm or less.
†15201	3	2	Full thickness graft, free, including direct closure of donor site, trunk; each additional 20 sq cm.
†15220	3	2	Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; 20 sq cm or less.
†15221	3	2	Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; each additional 20 sq cm.

	Payment groups		
	Old	New	
15240	3	3	Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 20 sq cm or less.
15241	3	3	Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; each additional 20 sq cm.
15260	3	2	Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips; 20 sq cm or less.
†15261	3	2	Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips; each additional 20 sq cm.
†15350	3	2	Application of allograft (homograft), skin.
†15410	3	2	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; 100 sq cm or less.
†15412	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 101 and 160 sq cm.
†15414	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 161 and 230 sq cm.
†15416	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; over 230 sq cm.
Repair			
Pedicle flaps (skin and deep tissues)			
†15500	4	3	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on trunk.
†15505	4	3	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on scalp, arms, or legs.
†15510	4	4	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on forehead, cheeks, chin, mouth, neck, axillae genitalia, hands, or feet.
†15515	4	4	Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on eyelids, nose, ears, or lips.
†15540	4	1	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to trunk.
†15545	4	2	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to scalp, arms, or legs.
15550	4	2	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to forehead, cheeks, chin, mouth, neck, axillae, genitalia, or hands, feet.
15555	4	3	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to eyelids, nose, ears, or lips.
15580	4	3	Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; cross finger pedicle flap, including free graft to donor site.
†15600	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at trunk.
†15610	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at scalp, arms, or legs.
15620	4	4	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at forehead, cheeks, chin, neck, axillae, genitalia, hands (except 15625), or feet.
15625	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; section pedicle of cross finger flap.
†15630	4	3	Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at eyelids, nose, ears, or lips.
15650	4	5	Transfer, intermediate, of any pedicle flap (e.g., abdomen to wrist, walking tube), any location.
15700	4	1	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; trunk.
15710	4	2	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; scalp, arms, or legs.
†15720	4	2	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands, or feet.
15730	4	3	Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; eyelids, nose, ears, or lips.
Other grafts			
†15740	3	2	Graft; island pedicle flap.
†15745	4	2	Graft; myocutaneous flap.
†15750	4	2	Graft; neurovascular pedicle flap.
†15755	4	3	Graft; free flap (microvascular transfer).
15760	3	2	Graft; composite (full thickness of external ear or nasal ala), including primary closure, donor area.
15770	3	3	Graft; derma-fat-fascia.
Miscellaneous procedures			
†15840	4	4	Graft for facial nerve paralysis; free fascia graft (including obtaining fascia).
†15841	4	4	Graft for facial nerve paralysis; free muscle graft (including obtaining graft).
†15842	4	4	Graft for facial nerve paralysis; free muscle graft by microsurgical technique.
†15845	4	4	Graft for facial nerve paralysis; regional muscle transfer.
Pressure ulcers (decubitus ulcers)			
†15920	3	3	Excision, coccygeal pressure ulcer, with coccygectomy; with primary suture.
†15922	3	4	Excision, coccygeal pressure ulcer, with coccygectomy; with local or regional skin flap closure.
†15931	3	3	Excision, sacral pressure ulcer, with primary suture.
†15933	3	3	Excision, sacral pressure ulcer, with primary suture; with ostectomy.
†15941	3	3	Excision, ischial pressure ulcer, with primary suture; with ostectomy (ischiectomy).
†15944	3	3	Excision, ischial pressure ulcer, with local or regional skin flap closure.
†15945	3	4	Excision, ischial pressure ulcer, with local or regional skin flap closure; with ostectomy.
†15946	3	4	Excision, ischial pressure ulcer, with ostectomy, with muscle flap or myocutaneous flap closure.
†15950	3	3	Excision, trochanteric pressure ulcer with primary suture.

	Payment groups		
	Old	New	
†15951	3	4	Excision, trochanteric pressure ulcer, with primary suture; with ostectomy.
†15952	3	3	Excision, trochanteric pressure ulcer, with local rotation skin flap closure.
†15953	3	4	Excision, trochanteric pressure ulcer, with local rotation skin flap closure; with ostectomy.
†15954	3	3	Excision, trochanteric pressure ulcer, with bipedicle flap closure.
†15955	3	4	Excision, trochanteric pressure ulcer, with bipedicle flap closure; with ostectomy.
†15956	3	3	Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure.
†15958	3	4	Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy.
†15960	3	2	Excision, heel pressure ulcer, with primary suture.
†15961	3	4	Excision, heel pressure ulcer, with primary suture; with ostectomy.
†15964	3	3	Excision, heel pressure ulcer, with skin flap closure.
†15965	3	4	Excision, heel pressure ulcer, with skin flap closure; with ostectomy.
†15966	3	4	Excision, heel pressure ulcer, with other flap closure.
†15967	3	4	Excision, heel pressure ulcer, with other flap closure; with ostectomy.
†15970	3	2	Excision, leg pressure ulcer, with primary suture.
†15971	3	4	Excision, leg pressure ulcer with primary suture, with ostectomy.
†15972	3	3	Excision, leg pressure ulcer, with local skin flap(s).
†15973	3	4	Excision, leg pressure ulcer, with local skin flap(s); with ostectomy.
†15974	3	4	Excision, leg pressure ulcer, with muscle or myocutaneous flap closure.
†15975	3	4	Excision, leg pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy.
†15980	3	3	Excision, knee pressure ulcer, with local skin flap closure.
†15981	3	4	Excision, knee pressure ulcer, with local skin flap closure; with ostectomy.
†15982	3	3	Excision, knee pressure ulcer, with other flap closure.
†15983	3	4	Excision, knee pressure ulcer, with other flap closure; with ostectomy.
Burns, local treatment			
16015	1	2	Dressing and/or debridement, initial or subsequent; under anesthesia, medium or large, or with major debridement.
			Breast
Incision			
19020	1	2	Mastotomy with exploration or drainage of abscess, deep.
Excision			
*19101	3	2	Biopsy of breast; incisional.
*19120	3	3	Excision of cyst, fibroadenoma, or other benign or malignant tumor, aberrant breast tissue, duct lesion or nipple lesion (except 19140), male or female, one or more lesions.
†*19140	4	4	Mastectomy for gynecomastia through circumareolar or other incision.
19160	4	3	Mastectomy, partial.
19180	4	4	Mastectomy, simple, complete.
19182	4	4	Mastectomy, subcutaneous.
			Musculoskeletal system
			General
Incision			
20005	1	2	Incision of soft tissue abscess (e.g., secondary to osteomyelitis); deep or complicated.
Excision			
20205	1	3	Biopsy, muscle; deep.
20225	3	2	Biopsy, bone, trocar or needle; deep (vertebral body, femur).
†20240	2	2	Biopsy, excisional; superficial (e.g., ilium, sternum, spinous process, ribs, trochanter of femur).
20245	3	3	Biopsy, excisional, deep (e.g., humerus, ischium, femur).
20250	4	3	Biopsy, vertebral body, open; thoracic.
†20251	4	3	Biopsy, vertebral body, open; lumbar or cervical.
Introduction or removal			
20525	2	3	Removal of foreign body in muscle or tendon sheath; deep or complicated.
20650	2	3	Insertion of wire or pin with application of skeletal traction, including removal (separate procedure).
†20660	2	2	Application of cranial tongs, caliper, or stereotactic frame, including removal (separate procedure).
†20661	2	3	Application of halo, including removal; cranial.
†20662	2	3	Application of halo, including removal; pelvic.
†20663	2	3	Application of halo, including removal; femoral.
†20665	2	1	Removal of tongs or halo applied by another physician.
20680	3	3	Removal of implant; deep (e.g., buried wire, pin, screw, metal band, nail, rod or plate).
Grafts (or implants)			
†20900	3	3	Bone graft, any donor area; minor or small (e.g., dowel or button).
†20902	4	4	Bone graft, any donor area; major or large.
20912	4	4	Cartilage graft; nasal septum.
†20920	4	4	Fascia lata graft; by stripper.
†20922	4	3	Fascia lata graft; by incision and area exposure, complex or sheet.
†20926	4	4	Tissue grafts, other (e.g., paratenon, fat, dermis, etc.).
Miscellaneous			
†20955	4	4	Bone graft with microvascular anastomosis; fibula.
†20960	4	4	Bone graft with microvascular anastomosis; rib.
†20962	4	4	Bone graft with microvascular anastomosis; other bone graft (specify).
†20969	4	4	Free osteocutaneous flap with microvascular anastomosis; other than iliac crest, rib, metatarsal, or great toe.
†20970	4	4	Free osteocutaneous flap with microvascular anastomosis; iliac crest.
†20971	4	4	Free osteocutaneous flap with microvascular anastomosis; rib.
†20972	4	4	Free osteocutaneous flap with microvascular anastomosis; metatarsal.
†20973	4	4	Free osteocutaneous flap with microvascular anastomosis; great toe with web space.
†20975	2	2	Electrical stimulation to aid bone healing; invasive (operative).
			Head
Incision			
†21010	3	2	Arthrotomy, temporomandibular joint; unilateral.

	Payment groups		
	Old	New	
†21011	3	3	Arthrotomy, temporomandibular joint; bilateral.
			General
Excision			
21034	4	3	Excision of malignant tumor of facial bone other than mandible.
*21040	3	2	Excision of benign cyst or tumor of mandible; simple.
21044	4	2	Excision of malignant tumor of mandible.
†21050	4	3	Condylectomy, tempromandibular joint (separate procedure).
†21060	4	2	Meniscectomy, partial or complete, temporomandibular joint; (separate procedure).
Introduction or removal			
21100	4	2	Application of halo type appliance for maxillofacial fixation, includes removal (separate procedure).
Fracture and/or dislocation			
†*21310	1	2	Treatment of closed or open nasal fracture without manipulation.
*21315	1	2	Manipulative treatment, nasal bone fracture; without stabilization.
21320	1	2	Manipulative treatment, nasal bone fracture; with stabilization.
21325	3	4	Open treatment of nasal fracture; uncomplicated.
21330	4	5	Open treatment of nasal fracture; complicated, with internal and/or external skeletal fixation.
21335	4	7	Open treatment of nasal fracture; with concomitant open treatment of fractured septum.
†21338	4	4	Open treatment of nasoethmoid fracture; without external fixation.
†21340	4	4	Treatment of closed or open nasoethmoid complex fracture, with splint, wire or headcap fixation, including repair of canthal ligaments and/or the nasolacrimal apparatus.
*21355	2	3	Manipulative treatment of closed or open fracture of malar area, including zygomatic arch and malar tripod, towel clip technique.
*21360	2	4	Open treatment of closed or open depressed malar fracture, including zygomatic arch and malar tripod.
21365	4	5	Open treatment of closed or open complicated, (e.g, multiple fractures), of malar area, including zygomatic arch and malar tripod, with internal skeletal fixation and multiple surgical approaches.
21450	4	3	Treatment of closed or open mandibular fracture; without manipulation.
21451	4	4	Treatment of closed or open mandibular fracture; with manipulation, may include external fixation.
†21452	4	2	Treatment of open mandibular fracture; without manipulation.
†21453	4	3	Treatment of open mandibular fracture; with manipulation.
†21480	2	1	Uncomplicated treatment of temporomandibular dislocation, initial or subsequent.
†21485	3	2	Complicated manipulative treatment of temporomandibular dislocation, initial or subsequent.
†21490	4	3	Open treatment of temporomandibular dislocation.
†21494	3	4	Treatment of closed or open hyoid fracture; with manipulation.
†21495	4	4	Open treatment of closed or open hyoid fracture.
			Neck (soft tissues) and thorax
Incision			
21501	1	2	Incision and drainage, deep abscess or hematoma, soft tissues of neck or thorax.
†21502	3	2	Incision and drainage, deep abscess or hematoma; with partial rib ostectomy.
†21510	3	3	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), thorax.
Excision			
21555	1	2	Excision tumor, soft tissue of neck or thorax; subcutaneous.
21556	2	2	Excision tumor, soft tissue of neck or thorax; deep, subfascial, intramuscular.
†21600	3	2	Excision of rib, partial.
†21610	3	2	Costotransversectomy (separate procedure).
			Abdomen
Excision			
22900	2	4	Excision, abdominal wall tumor, subfascial (e.g., desmoid).
			Shoulder
Incision			
†23000	3	2	Removal of subdeltoid (or intratendinous) calcareous deposits.
†23020	3	2	Capsular contracture release (Sever type procedure) for Erb's palsy.
†23030	1	1	Incision and drainage shoulder area; deep abscess or hematoma.
†23035	2	3	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess), shoulder area.
†23040	4	3	Arthrotomy, glenohumeral joint, for infection, with exploration, drainage or removal of foreign body.
23044	4	4	Arthrotomy of shoulder area acromioclavicular, sternoclavicular joint, for infection.
Excision			
†23066	1	2	Biopsy, soft tissue of shoulder area; deep.
23076	1	2	Excision, tumor, shoulder area; deep, subfascial or intramuscular.
†23100	4	2	Arthrotomy for biopsy, glenohumeral joint.
23101	4	7	Arthrotomy for biopsy or for excision of torn cartilage, acromioclavicular, sternoclavicular joint.
23130	4	5	Acromionectomy, partial or total.
23140	4	4	Excision or curettage of bone cyst or benign tumor of clavicle or scapula.
†23150	4	4	Excision or curettage of bone cyst or benign tumor of proximal humerus.
†*23170	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), clavicle.
†*23172	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess),scapula.
†*23174	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), humeral head to surgical neck.
†23180	3	4	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), clavicle.
†23182	3	4	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), scapula.
†23184	3	4	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), proximal humerus.
†23190	3	4	Ostectomy of scapula, partial (e.g., superior medial angle).
†23195	3	5	Resection humeral head.
Introduction or removal			
23331	2	1	Removal of foreign body, shoulder; deep (e.g., Neer prosthesis removal).
Repair, revision or reconstruction			
†23405	3	2	Tenomyotomy, shoulder area; single.
†23406	3	2	Tenomyotomy, shoulder area; multiple through same incision.

	Payment groups		
	Old	New	
Fracture and/or dislocation			
23505	2	1	Treatment of closed clavicular fracture; with manipulation.
†23515	4	3	Open treatment of closed or open clavicular fracture, with or without internal or external skeletal fixation.
†23605	2	2	Treatment of closed humeral (surgical or anatomical neck) fracture; with manipulation.
†23610	4	3	Treatment of open humeral (surgical or anatomical neck) fracture, with uncomplicated soft tissue closure.
†23625	2	2	Treatment of closed greater tuberosity fracture; with manipulation.
†23630	4	5	Open treatment of closed or open greater tuberosity fracture, with or without internal or external skeletal fixation.
23655	1	1	Treatment of closed shoulder dislocation, with manipulation; requiring anesthesia.
†23658	4	3	Treatment of open shoulder dislocation, with uncomplicated soft tissue closure.
†23660	4	3	Open treatment of closed or open shoulder dislocation.
†23665	2	2	Treatment of closed shoulder dislocation, with fracture of greater tuberosity, with manipulation.
†23670	4	3	Open treatment of closed or open shoulder dislocation, with fracture of greater tuberosity.
†23675	2	2	Treatment of closed shoulder dislocation, with surgical or anatomical neck fracture, with manipulation.
†23680	4	3	Open treatment of closed or open shoulder dislocation, with surgical or anatomical neck fracture.
Manipulation			
23700	2	1	Manipulation under anesthesia, shoulder joint, including application of fixation apparatus (dislocation excluded).
			Humerus (Upper Arm) and Elbow
Incision			
†23930	1	1	Incision and drainage upper arm or elbow area; deep abscess or hematoma.
†23935	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), humerus or elbow.
24000	2	4	Arthrotomy, elbow, for infection, with exploration, drainage or removal of foreign body.
Excision			
†24075	2	2	Excision, tumor upper arm or elbow area; subcutaneous.
24076	2	2	Excision, tumor upper arm or elbow area; deep, subfacial or intramuscular.
24100	4	1	Arthrotomy, elbow; for synovial biopsy only.
24101	4	4	Arthrotomy, elbow; with joint exploration, with or without biopsy, with or without removal of loose or foreign body.
†24105	4	3	Excision, olecranon bursa.
24110	3	2	Excision, or curettage of bone cyst or benign tumor, humerus.
†24115	4	3	Excision or curettage of bone cyst or benign tumor, humerus; with primary autogenous graft (includes obtaining graft).
†24116	4	3	Excision or curettage of bone cyst or benign tumor, humerus; with homogenous or other nonautogenous graft.
†24120	3	3	Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process.
†24125	4	3	Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with primary autogenous graft (includes obtaining graft).
†24126	4	3	Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with homogenous or other nonautogenous graft.
†24130	3	3	Excision, radial head.
†*24134	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), shaft or distal humerus.
†*24136	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), radial head or neck.
†*24138	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), olecranon process.
†24140	2	3	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), humerus.
†24145	2	3	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), radial head or neck.
24147	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), olecranon process.
†24155	4	3	Resection of elbow joint (arthrectomy).
Introduction or Removal			
†24160	2	2	Implant removal; elbow joint.
24164	2	3	Implant removal; radial head.
24201	1	2	Removal of foreign body, upper arm or elbow area; deep.
Repair Revision and Reconstruction			
24301	3	4	Muscle or tendon transfer, any type upper arm or elbow, single (excluding 24320-24331).
24310	3	3	Tenotomy, open, elbow to shoulder, single, each.
†*24320	4	3	Tenoplasty, with muscle transfer, with or without free graft, elbow to shoulder, single (Seddon-Brookes type procedure).
†24330	4	3	Flexor-plasty, elbow, (e.g., Steindler type advancement).
†24331	4	3	Flexor-plasty, elbow, (e.g., Steindler type advancement); with extensor advancement.
†24340	4	3	Tenodesis for rupture of biceps tendon at elbow.
†24342	4	3	Reinsertion of ruptured biceps tendon, distal, with or without tendon graft (includes obtaining graft).
*24350	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis).
†*24351	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with extensor origin detachment.
†*24352	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with annular ligament resection.
†*24354	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with stripping.
24356	4	3	Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with partial ostectomy.
†24420	4	3	Osteoplasty, humerus (e.g., shortening or lengthening) (excluding 64876).
†24470	4	3	Hemiepiphyseal arrest (e.g., for cubitus varus or valgus, distal humerus).
†24495	3	2	Decompression fasciotomy, forearm, with brachial artery exploration.
Fracture and/or Dislocation			
†24505	1	1	Treatment of closed humeral shaft fracture; with manipulation.
†24506	2	3	Treatment of closed humeral shaft fracture; percutaneous insertion of pin or rod.
†24510	3	3	Treatment of open humeral shaft fracture, with uncomplicated soft tissue closure.
†24515	4	4	Open treatment of closed or open humeral shaft fracture, with or without internal or external skeletal fixation.
†24530	1	1	Treatment of closed humeral supracondylar or transcondylar fracture, without manipulation.

	Payment groups		
	Old	New	
†24531	2	2	Treatment of closed humeral supracondylar or transcondylar fracture, without manipulation; with traction (pin or skin).
†24535	1	1	Treatment of closed supracondylar or transcondylar fracture, with manipulation.
†24536	2	2	Treatment of closed supracondylar or transcondylar fracture, with manipulation; with traction (pin or skin).
†24538	2	2	Treatment of closed supracondylar or transcondylar fracture, with manipulation; with percutaneous skeletal fixation.
†24540	4	3	Treatment of open humeral supracondylar or transcondylar fracture, with uncomplicated soft tissue closure.
†24542	4	3	Treatment of open humeral supracondylar or transcondylar fracture, with uncomplicated soft tissue closure; with traction (pin or skin).
†24545	4	4	Open treatment of closed or open humeral supracondylar or transcondylar fracture, with or without internal or external skeletal fixation.
†24565	1	2	Treatment of closed humeral epicondylar fracture, medial or lateral; with manipulation.
†24570	3	2	Treatment of open humeral epicondylar fracture, medial or lateral, with uncomplicated soft tissue closure.
†24575	4	3	Open treatment of closed or open humeral epicondylar fracture, medial or lateral, with or without internal or external skeletal fixation.
†24577	1	1	Treatment of closed humeral condylar fracture, medial or lateral; with manipulation.
†24578	3	2	Treatment of open humeral condylar fracture, medial or lateral, with uncomplicated soft tissue closure.
†24579	4	3	Open treatment of closed or open humeral condylar fracture, medial or lateral, with or without internal or external skeletal fixation.
24580	1	2	Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), treatment with traction, (pin or skin); without manipulation.
†24581	1	1	Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), treatment with traction, (pin or skin); with manipulation.
†24583	4	3	Treatment of open comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), with uncomplicated soft tissue closure.
†24585	4	4	Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation.
†24586	4	4	Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with elbow resection.
24605	1	2	Treatment of closed elbow dislocation; requiring anesthesia.
†24610	3	3	Treatment of open elbow dislocation, with uncomplicated soft tissue closure.
†24615	3	3	Open treatment of closed or open elbow dislocation.
†24620	2	2	Treatment of closed Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head).
†24625	4	3	Treatment of open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with uncomplicated soft tissue closure.
†24635	4	3	Open treatment of closed or open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with or without internal or external skeletal fixation.
†24655	1	1	Treatment of closed radial head or neck fracture; with manipulation.
†24665	4	4	Open treatment of closed or open radial head or neck fracture, with or without internal fixation or radial head excision.
†24666	4	4	Open treatment of closed or open radial head or neck fracture, with or without internal fixation or radial head excision; with implant.
†24675	1	1	Treatment of closed ulnar fracture, proximal end (olecranon process); with manipulation.
†24680	3	2	Treatment of open ulnar fracture, proximal end (olecranon process), with uncomplicated soft tissue closure.
†24685	4	3	Open treatment of closed or open ulnar fracture proximal end (olecranon process), with or without internal or external skeletal fixation.
			Forearm and Wrist
Incision			
*25000	2	3	Tendon sheath incision; at radial styloid for deQuervain's disease.
25005	2	3	Tendon sheath incision; at wrist for other stenosing tenosynovitis.
*25020	4	3	Decompression fasciotomy, flexor and/or extensor compartment.
†*25023	4	3	Decompression fasciotomy, flexor and/or extensor compartment; with debridement of nonviable muscle and/or nerve.
†25028	1	1	Incision and drainage, forearm and/or wrist; deep abscess or hematoma.
†25035	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), forearm and/or wrist.
25040	2	4	Arthrotomy, radiocarpal or mediocarpal joint, for infection, with exploration, drainage, or removal of foreign body.
Excision			
†25066	1	2	Biopsy, soft tissue of forearm and/or wrist; deep.
25076	1	3	Excision, tumor forearm and/or wrist area; deep, subfascial or intramuscular.
25085	3	3	Capsulotomy, wrist (e.g., for contracture).
†25100	2	2	Arthrotomy, wrist joint; for biopsy.
25101	3	3	Arthrotomy, wrist joint; with joint exploration, with or without biopsy, with or without removal of loose or foreign body.
25107	3	3	Arthrotomy distal radioulnar joint for repair of triangular cartilage complex.
25110	3	3	Excision, lesion of tendon sheath, forearm and/or wrist.
*25111	3	3	Excision of ganglion, wrist (dorsal or volar); primary.
*25112	3	4	Excision of ganglion, wrist (dorsal or volar); recurrent.
25120	3	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process).
†25125	4	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with primary autogenous graft (includes obtaining graft).
†25126	4	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with homogenous or other nonautogenous graft.
25130	3	3	Excision or curettage of bone cyst or benign tumor of carpal bones.
†25135	3	3	Excision or curettage of bone cyst or benign tumor of carpal bones; with primary autogenous graft (includes obtaining graft).

	Payment groups		
	Old	New	
†25136	4	3	Excision or curettage of bone cyst or benign tumor of carpal bones; with homogenous or other nonautogenous graft.
25145	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess), forearm and/or wrist.
†25150	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); ulna.
†25151	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); radius.
25210	3	3	Carpectomy; one bone.
†25215	3	4	Carpectomy; all bones of proximal row.
25230	3	4	Radial styloidectomy (separate procedure).
25240	3	4	Excision distal ulna (Darrach type procedure).
Introduction or Removal			
25248	2	2	Exploration for removal of deep foreign body, forearm or wrist.
Repair, Revision or Reconstruction			
*25260	3	4	Repair, tendon or muscle, flexor, forearm and/or wrist; primary, single, each tendon or muscle.
†*25263	3	2	Repair, tendon or muscle, flexor, forearm and/or wrist; secondary, single, each tendon or muscle.
†*25265	4	3	Repair tendon or muscle, flexor, forearm and/or wrist; secondary, with free graft (includes obtaining graft), each tendon or muscle.
*25270	3	4	Repair, tendon or muscle, extensor, forearm and/or wrist; primary, single, each tendon or muscle.
†*25272	3	3	Repair, tendon or muscle, extensor, forearm and/or wrist; secondary, single, each tendon or muscle.
†25274	4	4	Repair, tendon or muscle, extensor, secondary, with tendon graft (includes obtaining graft), forearm and/or wrist, each tendon or muscle.
25280	3	4	Lengthening or shortening of flexor or extensor tendon, forearm and/or wrist, single, each tendon.
25290	3	3	Tenotomy, open, flexor or extensor tendon, forearm and/or wrist, single, each tendon.
25295	3	3	Tenolysis, flexor or extensor tendon forearm and/or wrist, single, each tendon.
25300	3	3	Tenodesis at wrist; flexors of fingers.
†25301	3	3	Tenodesis at wrist; extensors of fingers.
†*25310	4	3	Tendon transplantation or transfer, flexor or extensor forearm and/or wrist, single; each tendon.
†*25312	4	4	Tendon transplantation or transfer, flexor or extensor, forearm and/or wrist, single; with tendon graft(s) (includes obtaining graft), each tendon.
†25315	3	3	Flexor origin slide for cerebral palsy, forearm and/or wrist.
†25316	3	3	Flexor origin slide for cerebral palsy, forearm and/or wrist; with tendon(s) transfer.
†25317	3	3	Flexor origin slide for Volkmann contracture.
†25318	3	3	Flexor origin slide for Volkmann contracture; with tendon(s) transfer.
+25320	4	3	Capsulorrhaphy or reconstruction, capsulectomy, wrist (includes synovectomy, resection of capsule, tendon insertions).
†25390	4	3	Osteoplasty radius OR ulna; shortening.
†25391	4	4	Osteoplasty, radius OR ulna; lengthening with autogenous bone graft.
†25392	4	3	Osteoplasty, radius AND ulna; shortening (excluding 64876).
+25393	4	4	Osteoplasty, radius AND ulna; lengthening with autogenous bone graft.
†25450	4	3	Epiphyseal arrest by epiphysiodesis or stapling; distal radius OR ulna.
†25455	4	3	Epiphyseal arrest by epiphysiodesis or stapling; distal radius AND ulna.
Fracture and/or Dislocation.			
25505	1	1	Treatment of closed radial shaft fracture; with manipulation.
†25510	3	2	Treatment of open radial shaft fracture, with uncomplicated soft tissue closure.
†25515	4	3	Open treatment of closed or open radial shaft fracture, with or without internal or external skeletal fixation.
†25535	1	1	Treatment of closed ulnar shaft fracture; with manipulation.
†25540	3	2	Treatment of open ulnar shaft fracture, with uncomplicated soft tissue closure.
†25545	4	3	Open treatment of closed or open ulnar shaft fracture, with or without internal or external skeletal fixation.
25565	1	2	Treatment of closed radial and ulnar shaft fractures; with manipulation.
†25570	3	3	Treatment of open radial and ulnar shaft fractures, with uncomplicated soft tissue closure.
†25575	4	3	Open treatment of closed or open radial and ulnar shaft fractures, with or without internal or external skeletal fixation.
†25605	1	3	Treatment of closed distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid; with manipulation.
†25610	2	3	Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; without external skeletal fixation or percutaneous pinning.
25611	2	3	Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; percutaneous pinning or pins and plaster technique.
†25615	3	4	Treatment of open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with uncomplicated soft tissue closure.
25620	4	5	Open treatment of closed or open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with or without internal or external skeletal fixation.
†25626	3	2	Treatment of open carpal scaphoid (navicular) fracture, with uncomplicated soft tissue closure.
†25628	4	3	Open treatment of closed or open carpal scaphoid (navicular) fracture, with or without skeletal fixation.
†25635	1	1	Treatment of closed carpal bone fracture (excluding carpal scaphoid (navicular)); with manipulation, each bone.
†25640	4	2	Treatment of open carpal bone fracture (excluding carpal scaphoid (navicular)), with uncomplicated soft tissue closure, each bone.
†25645	4	3	Open treatment of closed or open carpal bone fracture (excluding carpal scaphoid (navicular)), each bone.
†25660	1	1	Treatment of closed radiocarpal or intercarpal dislocation, one or more bones, with manipulation.
†25665	3	3	Treatment of open radiocarpal or intercarpal dislocation, one or more bones, with uncomplicated soft tissue closure.
†25670	4	3	Open treatment of closed or open radiocarpal or intercarpal dislocation, one or more bones.
†25675	1	1	Treatment of closed distal radioulnar dislocation with manipulation.
†25676	3	2	Open treatment of closed or open distal radioulnar dislocation, acute or chronic.
†25680	1	2	Treatment of closed trans-scaphoperilunar type of fracture dislocation, with manipulation.
†25685	3	3	Open treatment of closed or open trans-scaphoperilunar type of fracture dislocation.
†25690	1	1	Treatment of lunate dislocation, with manipulation.

	Payment groups		
	Old	New	
†25695	3	2	Open treatment of lunate dislocation
			Hands and Fingers
Incision			
26011	1	1	Drainage of finger abscess; complicated (e.g., felon, etc.).
26020	1	2	Drainage of tendon sheath, one digit and/or palm.
†26025	1	1	Drainage of palmar bursa; single, ulnar or radial.
†26030	1	2	Drainage of palmar bursa; multiple or complicated.
†26034	2	2	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess), hand or finger.
26035	2	4	Decompression fingers and/or hand, injection injury (e.g., grease gun, etc.).
*26040	4	4	Fasciotomy, palmar, for Dupuytren's contracture; closed (subcutaneous).
*26045	4	3	Faciotomy, palmar, for Dupuytren's contracture; open, partial.
†*26055	1	2	Tendon sheath incision for trigger finger.
*26060	1	2	Tenotomy, subcutaneous, single, each digit.
26070	2	2	Arthrotomy, for infection, with exploration, drainage or removal of foreign body; carpometacarpal joint.
26075	2	4	Arthrotomy for infection, with exploration, drainage or removal of foreign body; metacarpophalangeal joint.
26080	2	4	Arthrotomy with exploration, drainage or removal of loose or foreign body; interphalangeal joint, each.
Excision			
26100	3	2	Arthrotomy for synovial biopsy; carpometacarpal joint.
†26105	3	1	Arthrotomy for synovial biopsy; metacarpophalangeal joint.
26110	3	1	Arthrotomy for synovial biopsy; interphalangeal joint, each.
26115	3	2	Excision, tumor or vasular malformation, hand or finger; subcutaneous.
26116	3	2	Excision, tumor or vascular malformation, hand or finger; deep, subfascial, intramuscular.
†*26120	4	3	Fasciectomy, palmar, simple, for Dupuytren's contracture; partial excision.
†*26122	4	4	Fasciectomy, palmar, simple, for Dupuytren's contracture; up to one-half palmar fascia, with single digit involvement, with or without Z-plasty or other local tissue rearrangement.
†26124	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); with single digit involvement.
†26126	4	3	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each additional digit.
*26128	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each finger joint release.
26135	4	4	Synovectomy, metacarpophalangeal joint including intrinsic release and extensor hood reconstruction, each digit.
*26140	4	2	Synovectomy, proximal interphalangeal joint, including extensor reconstruction; each interphalangeal joint.
*26145	4	3	Synovectomy tendon sheath, radical (tenosynovectomy), flexor, palm or finger, single, each digit.
26160	3	3	Excision of lesion of tendon sheath or capsule (e.g., cyst mucous cyst or ganglion), hand or finger.
26170	3	3	Excision of tendon, palm, flexor, single (separate procedure), each.
26180	3	3	Excision of tendon, finger, flexor (separate procedure).
26200	3	2	Excision or curettage of bone cyst or benign tumor of metacarpal.
†26205	3	3	Excision or curettage of bone cyst or benign tumor of metacarpal; with autogenous graft (includes obtaining graft).
26210	3	2	Excision or curettage of bone cyst or benign tumor of proximal, middle or distal phalanx of finger.
†26215	3	3	Excision or curettage of bone cyst or benign tumor of proximal, middle or distal phalanx; with autogenous graft (includes obtaining graft).
26230	3	7	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis); metacarpal.
26235	3	3	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis); proximal or middle phalanx of finger.
†26250	4	3	Radical resection (ostectomy) for tumor, metacarpal.
†26255	4	3	Radical resection (ostectomy) for tumor, metacarpal; with autogenous graft (includes obtaining graft).
+26261	4	3	Radical resection (ostectomy) for tumor, proximal or middle phalanx; with autogenous graft (includes obtaining graft).
Repair, Revision or Reconstruction			
*26350	3	1	Flexor tendon repair or advancement, single, not in "no man's land"; primary or secondary without free graft, each tendon.
*26352	4	3	Flexor tendon repair or advancement, single, not in "no man's land"; secondary with free graft (includes obtaining graft), each tendon.
*26356	3	4	Flexor tendon repair or advancement, single, in "no man's land"; primary, each tendon.
†*26358	4	4	Flexor tendon repair or advancement, single, in "no man's land"; secondary with free graft (includes obtaining graft), each tendon.
*26370	3	4	Profundus tendon repair or advancement, with intact sublimis; primary.
†*26372	4	4	Profundus tendon repair or advancement, with intact sublimis; secondary with free graft (includes obtaining graft).
*26373	3	3	Profundus tendon repair or advancement, with intact sublimis; secondary without free graft.
*26390	3	4	Flexor tendon excision, implantation of plastic tube or rod for delayed tendon graft, hand or finger.
†*26392	4	3	Removal of tube or rod and insertion of flexor tendon graft (includes obtaining graft) hand or finger.
†*26410	3	3	Extensor tendon repair, dorsum of hand, single, primary or secondary; without free graft, each tendon.
†*26412	4	3	Extensor tendon repair, dorsum of hand, single, primary or secondary; with free graft (includes obtaining graft), each tendon.
*26418	3	3	Extensor tendon repair, dorsum of finger, single, primary or secondary; without free graft, each tendon.
*26420	4	4	Extensor tendon repair, dorsum of finger, single, primary or secondary; with free graft (includes obtaining graft), each tendon.
*26426	4	3	Extensor tendon repair, central slip repair, secondary (boutonniere deformity); using local tissues.
†*26428	4	3	Extensor tendon repair, central slip repair, secondary (boutonniere deformity); with free graft (includes obtaining graft).
*26432	4	3	Extensor tendon repair, distal insertion ("mallet finger"), closed, splinting with or without percutaneous pinning.
†*26433	3	3	Extensor tendon repair, distal insertion ("mallet finger"), open, primary or secondary repair; without graft.
†*26434	4	3	Extensor tendon repair, distal insertion ("mallet finger"), open, primary or secondary repair; with free graft (includes obtaining graft).
26440	3	3	Tenolysis, simple, flexor tendon; palm OR finger, single, each tendon.

	Payment groups		
	Old	New	
†26442	3	3	Tenolysis, simple, flexor tendon; palm AND finger, each tendon.
26445	3	3	Tenolysis, extensor tendon, dorsum of hand or finger; each tendon.
26449	4	3	Tenolysis, complex, extensor tendon, dorsum of hand or finger, including hand and forearm.
*26450	1	3	Tenotomy, flexor, single, palm, open, each.
†*26455	1	3	Tenotomy, flexor, single finger, open, each.
†*26460	1	3	Tenotomy, extensor, hand or finger, single, open, each.
†26471	2	2	Tenodesis; for proximal interphalangeal joint stabilization.
†26474	2	2	Tenodesis; for distal joint stabilization.
†26476	3	1	Tendon lengthening, extensor, hand or finger, single, each.
†26477	3	1	Tendon shortening, extensor, hand or finger, single, each.
†*26480	4	3	Tendon transfer or transplant, carpometacarpal area or dorsum of hand, single; without free graft, each.
†*26483	4	3	Tendon transfer or transplant, carpometacarpal area or dorsum of hand, single; with free (includes obtaining graft), graft each tendon.
†*26485	4	2	Tendon transfer or transplant, palmar, single, each tendon; without free tendon graft.
†*26489	4	3	Tendon transfer or transplant, palmar, single, each tendon; with free tendon graft (includes obtaining graft), each tendon.
†26490	4	3	Opponens plasty; sublimis tendon transfer type.
†26492	4	3	Opponens plasty; tendon transfer with graft (includes obtaining graft).
†26494	4	3	Opponens plasty; hypothenar muscle transfer.
†26496	4	3	Opponens plasty; other methods.
†26497	4	3	Tendon transfer to restore intrinsic function; ring and small finger.
†26498	4	4	Tendon transfer to restore intrinsic function; all four fingers.
†26499	4	3	Correction claw finger; other methods.
26500	4	4	Tendon pulley reconstruction; with local tissues (separate procedure).
†26502	4	4	Tendon pulley reconstruction; with tendon or fascial graft (includes obtaining graft) (separate procedure).
26508	4	3	Thenar muscle release for thumb contracture.
†26510	4	3	Cross intrinsic transfer.
†26516	2	1	Capsulodesis for M–P joint stabilization; single digit.
†26517	2	3	Capsulodesis for M–P joint stabilization; two digits.
†26518	3	3	Capsulodesis for M–P joint stabilization; three or four digits.
*26520	3	3	Capsulectomy or capsulatomy for contracture; metacarpophalangeal joint, single, each.
†*26525	3	3	Capsulectomy or capsulatomy for contracture; interphalangeal joint, single, each.
*26530	4	3	Arthroplasty, metacarpophalangeal joint; single, each.
*26531	4	7	Arthroplasty, metacarpophalangeal joint; with prosthetic implant, single, each.
*26535	4	4	Arthroplasty interphalangeal joint; single, each.
*26536	4	5	Arthroplasty interphalangeal joint; with prosthetic implant, single, each.
*26540	4	4	Primary repair of collateral ligament, metacarpophalangeal joint.
*26541	4	7	Reconstruction, collateral ligament, metacarpophalangeal joint; with tendon or fascial graft (includes obtaining graft).
†26542	4	4	Primary repair of collateral ligament, metacarpophalangeal joint; with local tissue.
*26545	4	4	Reconstruction, collateral ligament, interphalangeal joint, single, including graft, each joint.
†26552	4	4	Reconstruction thumb with toe.
†26555	4	3	Positional change of other finger.
†26557	4	3	Toe to finger transfer; first stage.
†26558	4	2	Toe to finger transfer; each delay.
†26559	4	2	Toe to finger transfer; second stage.
*26567	4	4	Osteotomy for correction of deformity; phalanx.
†26568	4	3	Osteoplasty for lengthening of metacarpal or phalanx.
26570	4	2	Bone graft, (includes obtaining graft); metacarpal.
†26574	4	2	Bone graft, (includes obtaining graft); phalanx.
Fractures and/or Dislocations			
26605	1	2	Treatment of closed metacarpal fracture, single; with manipulation, each bone.
26607	2	2	Treatment of closed metacarpal fracture, single, with manipulation, with skeletal fixation, each bone.
26610	2	4	Treatment of open metacarpal fracture, single, with uncomplicated soft tissue closure, each bone.
26645	1	1	Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation.
26650	2	2	Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation; with skeletal fixation.
†26655	3	3	Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure.
†26660	3	3	Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure; with skeletal fixation.
26665	3	4	Open treatment of closed or open carpometacarpal fracture dislocation, thumb (Bennett fracture), with or without internal or external skeletal fixation.
†26675	1	2	Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; requiring anesthesia.
†26676	2	2	Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; with percutaneous pinning.
†26680	2	2	Treatment of open carpometacarpal dislocation, other than Bennett fracture, single, with uncomplicated soft closure.
†26685	3	3	Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; single, with or without internal or external skeletal fixation.
†26686	3	3	Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; complex, multiple or delayed reduction.
†26705	1	2	Treatment of closed metacarpophalangeal dislocation, single, with manipulation; requiring anesthesia.
†26706	2	2	Treatment of closed metacarpalphalangeal dislocation, single, with manipulation; with percutaneous pinning.
†26710	2	2	Treatment of open metacarpophalangeal dislocation, single, with uncomplicated soft tissue closure.
26715	3	4	Open treatment of closed or open metacarpophalangeal dislocation, single, with or without internal, or external skeletal fixation.
26727	2	7	Treatment of unstable phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with manipulation, requiring traction or fixation, each.

	Payment groups		
	Old	New	
†26730	2	2	Treatment of open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with uncomplicated soft tissue closure, each.
26735	3	4	Open treatment of closed or open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with or without internal or external skeletal fixation, each.
†26744	2	2	Treatment of open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint; with uncomplicated soft tissue closure, each.
26746	3	5	Open treatment of closed or open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint, each.
26765	3	4	Open treatment of closed or open distal phalangeal fracture, finger or thumb, each.
†26780	2	2	Treatment of open interphalangeal joint dislocation, single, with uncomplicated soft tissue closure.
†26785	3	2	Open treatment of closed or open interphalangeal joint dislocation, single.
Arthrodesis			
*26820	4	5	Fusion in opposition, thumb, with autogenous graft (includes obtaining graft).
†*26841	4	4	Arthrodesis, carpometacarpal joint, thumb, with or without internal fixation.
†*26842	4	4	Arthrodesis, carpometacarpal joint, thumb, with or without internal fixation; with autogenous graft (includes obtaining graft).
†*26843	4	3	Arthrodesis, carpometacarpal joint, digits, other than thumb.
†*26844	4	3	Arthrodesis, carpometacarpal joint, digits, other than thumb; with autogenous graft (includes obtaining graft).
†*26860	4	3	Arthrodesis, interphalangeal joint, with or without internal fixation.
†*26861	4	2	Arthrodesis, interphalangeal joint, with or without internal fixation; each additional interphalangeal joint.
†*26862	4	4	Arthrodesis, interphalangeal joint, with or without internal fixation; with autogenous graft (includes obtaining graft).
†*26863	4	3	Arthrodesis, interphalangeal joint, with or without internal fixation; with autogenous graft (includes obtaining graft), each additional joint.
Amputation			
*26910	2	3	Amputation, metacarpal, with finger or thumb (ray amputation), single, with or without interosseus transfer.
*26951	2	2	Amputation, finger or thumb, primary or secondary, any joint or phalanx, single, including neurectomies; with direct closure.
*26952	4	4	Amputation, finger or thumb, primary or secondary, any joint or phalanx, single, including neurectomies; with local advancement flaps (V–Y, hood).
			Pelvis and Hip Joint
Incision			
†26990	2	1	Incision and drainage, pelvis or hip joint area; deep abscess or hematoma.
†26991	2	1	Incision and drainage, pelvis or hip joint area; infected bursa.
†26992	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), pelvis and/or hip joint.
†27000	3	2	Tenotomy, adductor of hip, subcutaneous, closed (separate procedure).
†27001	4	3	Tenotomy, adductor of hip, subcutaneous, open; unilateral.
†27002	4	2	Tenotomy, adductor of hip, subcutaneous, open; bilateral.
†27003	4	3	Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; unilateral.
†27004	4	3	Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; bilateral.
†27030	4	3	Arthrotomy, hip, for infection, with drainage.
†27033	4	3	Arthrotomy, hip, for exploration or removal of loose or foreign body.
†27035	4	4	Hip joint denervation, intrapelvic or extrapelvic intra-articular branches of sciatic, femoral or obturator nerves.
Excision			
†27040	4	1	Biopsy, soft tissue of pelvis and hip area; superficial.
†27041	4	2	Biopsy, soft tissue of pelvis and hip area; deep.
27047	4	2	Excision, tumor, pelvis and hip area; subcutaneous.
27048	4	3	Excision, tumor, pelvis and hip area; deep, subfascial, intramuscular.
†27052	4	3	Arthrotomy for biopsy; hip joint.
27065	4	4	Excision of bone cyst or benign tumor; superficial (wing of ilium, symphysis pubis, or greater trochanter of femur) with or without autogenous bone graft.
27066	4	5	Excision of bone cyst or benign tumor; deep, with or without bone graft.
†27080	4	2	Coccygectomy, primary.
Introduction and/or Removal			
27087	2	3	Removal of foreign body, pelvis or hip; deep.
†27095	1	1	Injection procedure for hip arthrography; with anesthesia.
Fractures and/or Dislocations			
†27201	4	2	Treatment of open coccygeal fracture.
†27202	4	2	Open treatment of closed or open coccygeal fracture.
Manipulation			
†27275	2	2	Manipulation, hip joint, requiring general anesthesia.
			Femur (Thigh Region) and Knee Joint
Incision			
27301	2	3	Incision and drainage of deep abscess, infected bursa, or hematoma, thigh or knee region.
†27303	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), femur or knee.
†*27305	4	2	Fasciotomy, iliotibial (tenotomy), open.
*27306	1	3	Tenotomy, subcutaneous, closed, adductor or hamstring, (separate procedure); single.
†*27307	1	3	Tenotomy, subcutaneous, closed, adductor or hamstring, (separate procedure); multiple.
27310	4	4	Arthrotomy, knee, for infection, with exploration, drainage or removal of foreign body.
†*27315	4	2	Neurectomy, hamstring muscle.
†*27320	4	2	Neurectomy, popliteal (gastrocnemius).
Excision			
27324	2	1	Biopsy, soft tissue of thigh or knee area; deep.
27327	1	2	Excision, tumor, thigh or knee area; subcutaneous.
27328	2	3	Excision, benign tumor; deep, subfascial, or intramuscular.
27330	4	4	Arthrotomy, knee; for synovial biopsy only.
27345	4	4	Excision of synovial cyst of popliteal space (Baker's cyst).
27350	4	4	Patellectomy or hemipatellectomy.

	Payment groups		
	Old	New	
27355	4	3	Excision or curettage of bone cyst or benign tumor of femur.
27360	4	5	Partial excision (craterization, saucerization or diaphysectomy) of bone, (e.g., for osteomyelitis), femur, proximal tibia and/or fibula.
Introduction and/or Removal			
27372	3	6	Removal of foreign body, deep, thigh region or knee area.
Repair, Revision or Reconstruction			
†27390	4	1	Tenotomy, open, hamstring, knee to hip; single.
†27391	4	2	Tenotomy, open, hamstring, knee to hip; multiple, one leg.
†27392	4	3	Tenotomy, open, hamstring, knee to hip; multiple, bilateral.
†27393	4	2	Lengthening of hamstring tendon; single.
†27394	4	3	Lengthening of hamstring tendon; multiple, one leg.
†27395	4	3	Lengthening of hamstring tendon; multiple, bilateral.
†27396	4	3	Transplant, hamstring tendon to patella; single.
†27397	4	3	Transplant, hamstring tendon to patella; multiple.
†27400	4	3	Tendon or muscle transfer, hamstrings to femur (Eggers type procedure).
†27420	4	3	Reconstruction for recurrent dislocating patella; (Hauser type procedure).
27422	4	7	Reconstruction for recurrent dislocating patella; with extensor realignment and/or muscle advancement or release (Campbell, Goldwaite, etc., type procedure).
†27424	4	3	Reconstruction for recurrent dislocating patella; with patellectomy.
27425	4	7	Lateral retinacular release (any method).
†27430	4	4	Quadriceps plasty (Bennett or Thompson type).
27435	4	4	Capsulotomy, knee, posterior capsular release.
Fractures and/or Dislocations			
†27522	3	3	Treatment of open pateller fracture, with uncomplicated soft tissue closure.
†27524	4	3	Open treatment of closed or open patellar fracture, with repair and/or excision.
Excision			
†27532	1	1	Treatment of closed tibial fracture, proximal (plateau); with manipulation.
Fractures and/or Dislocations			
†27534	3	2	Treatment of open tibial fracture, proximal (plateau), with uncomplicated soft tissue closure.
†27552	1	1	Treatment of closed knee dislocation; requiring anesthesia.
†27562	1	1	Treatment of closed patellar dislocation; requiring anesthesia.
†27564	4	1	Treatment of open patellar dislocation, with uncomplicated soft tissue closure.
27566	4	2	Open treatment of closed or open patellar dislocation, with or without partial or total patellectomy.
Manipulation			
27570	2	1	Manipulation of knee joint under general anesthesia (includes application of traction or other fixation devices).
			Leg (Tibia and Fibula) and Ankle Joint
Incision			
27603	2	2	Incision and drainage, leg or ankle; deep abscess or hematoma.
†*27605	1	1	Tenotomy, Achilles tendon, subcutaneous (separate procedure); local anesthesia.
*27606	1	1	Tenotomy, Achilles tendon, subcutaneous (separate procedure); general anesthesia.
†27607	2	2	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess), leg or ankle.
27610	2	2	Arthrotomy, ankle, for infection with exploration, drainage or removal of foreign body.
27612	4	3	Arthrotomy, ankle, posterior capsular release, with or without Achilles tendon lengthening.
Excision			
27620	3	4	Arthrotomy, ankle, with joint exploration, with or without biopsy, with or without removal of loose or foreign body.
27630	3	3	Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion), leg and/or ankle.
†27635	3	3	Excision or curettage of bone cyst or benign tumor, tibia or fibula.
27637	4	3	Excision or curettage of bone cyst, or benign tumor, tibia or fibula; with primary autogenous graft (includes obtaining graft).
†27638	4	3	Excision or curettage of bone cyst, or benign tumor, tibia or fibula; with primary homogenous graft.
†27640	4	2	Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis or exostosis); tibia.
27641	4	2	Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis or exostosis); fibula.
Repair, Revision or Reconstruction			
*27650	3	3	Repair, primary, open or percutaneous, ruptured Achilles tendon.
†*27652	3	3	Repair, primary, open or percutaneous, ruptured Achilles tendon; with graft (includes obtaining graft).
†*27654	4	3	Repair, secondary, ruptured Achilles tendon, with or without graft.
†*27656	3	2	Repair, fascial defect of leg.
†*27658	3	1	Repair or suture of flexor tendon of leg; primary, without graft, each.
†*27659	4	2	Repair or suture of flexor tendon of leg; secondary with or without graft, single tendon, each.
†*27664	3	2	Repair or suture of extensor tendon of leg; primary, without graft, single, each.
†*27665	4	2	Repair or suture of extensor tendon of leg; secondary with or without free graft, single tendon, each.
†*27675	4	2	Repair for dislocating peroneal tendons; without fibular osteotomy.
†*27676	4	3	Repair for dislocating peroneal tendons; with fibular osteotomy.
27680	3	3	Tenolysis, including tibia, fibula and ankle flexor; single.
†27681	4	2	Tenolysis, including tibia, fibula and ankle flexor; multiple (through same incision), each.
†27685	3	3	Lengthening or shortening of tendon, leg or ankle; single (separate procedure).
†27686	4	3	Lengthening or shortening of tendon; multiple (through same incision), each.
27690	4	4	Transfer or transplant of single tendon (with muscle redirection or rerouting); superficial (e.g., anterior tibial extensors into midfoot).
†27691	4	4	Transfer or transplant of single tendon (with muscle redirection or rerouting); anterior tibial or posterior tibial through interosseous space.
†27692	4	3	Transfer or transplant of single tendon (with muscle redirection or rerouting); each additional tendon.
Fractures and/or dislocations			
†27756	4	3	Open treatment of closed or open tibial shaft fracture, with internal skeletal fixation; simple.

	Payment groups		
	Old	New	
†27758	4	4	Open treatment of closed or open tibial shaft fracture, with internal or external skeletal fixation; complicated.
†27764	3	2	Treatment of open distal tibial fracture (medial malleolus), with uncomplicated soft tissue closure.
†27766	3	3	Open treatment of closed or open distal tibial fracture (medial malleolus), with fixation.
†27781	1	1	Treatment of closed proximal fibula or shaft fracture; with manipulation.
†27782	3	2	Treatment of open proximal fibula or shaft fracture, with uncomplicated soft tissue closure.
†27784	4	3	Open treatment of closed or open proximal fibula or shaft fracture, with or without internal or external skeletal fixation.
†27790	3	3	Treatment of open distal fibular fracture (lateral malleolus), with uncomplicated soft tissue closure.
†27792	4	3	Open treatment of closed or open distal fibular fracture (lateral malleolus), with fixation.
†27802	1	1	Treatment of closed tibia and fibula fractures, shafts; with manipulation.
†27804	3	3	Treatment of open tibia and fibula fractures, shafts, with uncomplicated soft tissue closure (e.g., "pins above and below").
†27842	1	1	Treatment of ankle dislocation; requiring anesthesia.
†27844	3	2	Treatment of open ankle dislocation, with uncomplicated soft tissue closure.
†27846	4	3	Open treatment of closed or open ankle dislocation.
†27848	4	3	Open treatment of closed or open ankle dislocation; with fixation.
Manipulation			
27860	1	1	Manipulation of ankle under general anesthesia (includes application of traction or other fixation apparatus).
			Foot
Incision			
28002	2	3	Deep dissection, below fascia, for deep infection of foot with or without tendon sheath involvement; single bursal space, specify.
†28003	2	3	Deep dissection, below fascia, for deep infection of foot with or without tendon sheath involvement; multiple areas.
†28005	2	3	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
*28008	4	3	Fasciotomy, plantar and/or toe, subcutaneous.
*28010	1	2	Tenotomy, subcutaneous, toe; single.
†*28011	1	2	Tenotomy, subcutaneous, toe; multiple.
*28030	4	4	Neurectomy of intrinsic musculature of foot.
28035	4	4	Tarsal tunnel release (posterior tibial nerve decompression).
Excision			
28045	2	3	Excision, tumor, foot; deep, subfascial, intramuscular.
28050	3	2	Arthrotomy for synovial biopsy; intertarsal or tarsometatarsal joint.
28062	4	3	Fasciectomy, excision of plantar fascia; radical (separate procedure).
*28072	4	3	Synovectomy; metatarsophalangeal joint, each.
*28080	3	3	Excision of interdigital neuroma, single, each.
*28086	4	2	Synovectomy, tendon sheath foot; flexor.
†*28088	4	2	Synovectomy, tendon sheath foot; extensor.
*28090	4	3	Excision of lesion of tendon or fibrous sheath or capsule (including synovectomy) (cyst or ganglion); foot.
†*28092	4	3	Excision of lesion of tendon or fibrous sheath or capsule (including synovectomy) (cyst or ganglion); toes.
†28102	4	3	Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with iliac or other autogenous bone graft (includes obtaining graft).
†28103	4	3	Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with homogenous bone graft.
†28107	3	3	Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus; with homogenous bone graft.
†*28110	3	3	Ostectomy, partial excision, fifth metatarsal head (bunionette) (separate procedure).
†*28111	3	3	Ostectomy, complete excision; first metatarsal head.
*28112	3	3	Ostectomy, complete excision other metatarsal head (second, third, or fourth).
†*28113	3	3	Ostectomy, complete excision fifth metatarsal head.
*28114	3	3	Ostectomy, complete excision; all metatarsal heads, with partial proximal phalangectomy, excluding first metatarsal (Clayton type procedure).
28118	3	4	Ostectomy, calcaneus.
28120	3	3	Partial excision (craterization, saucerization, sequestrectomy, or diaphysectomy) of bone (e.g., for osteomyelitis or talar bossing), talus or calcaneus.
†28122	3	3	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis or tarsal bossing), tarsal or metatarsal bone, except talus or calcaneus.
28140	3	3	Metatarsectomy.
†28171	3	3	Radical resection for tumor; tarsal (except talus or calcaneus).
†28173	3	3	Radical resection for tumor; metatarsal.
†28175	3	3	Radical resection for tumor; phalanx of toe.
Introduction and/or removal			
28193	2	4	Removal of foreign body, foot; complicated.
Repair, revision or reconstruction			
†*28200	3	3	Repair or suture of tendon, foot, flexor, single; primary or secondary, without free graft, each tendon.
†*28202	4	3	Repair or suture of tendon, foot, flexor, single; secondary with free graft, each tendon (includes obtaining graft).
†*28208	3	3	Repair or suture of tendon, foot, extensor, single; primary or secondary, each tendon.
†*28210	4	3	Repair or suture of tendon, foot, extensor, single; secondary with free graft, each tendon (includes obtaining graft).
†*28222	3	1	Tenolysis, flexor, foot; multiple (through same incision).
†*28225	3	1	Tenolysis, extensor, foot; single.
†*28226	3	1	Tenolysis, extensor, foot; multiple (through same incision).
*28230	1	1	Tenotomy, open, flexor; foot, single or multiple (separate procedure).
*28232	1	4	Tenotomy, open, flexor; toe, single (separate procedure).
*28234	1	3	Tenotomy, open, extensor, foot or toe.
†*28240	1	3	Tenotomy lengthening or release, abductor hallucis muscle.
†28250	2	3	Division of plantar fascia and muscle ("Steindler stripping") (separate procedure).
†28260	3	3	Capsulotomy, midfoot; medial release only (separate procedure).
28261	3	3	Capsulotomy, midfoot; with tendon lengthening.

	Payment groups		
	Old	New	
†*28264	3	1	Capsulotomy, midtarsal (Heyman type procedure).
*28270	3	2	Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single, each joint (separate procedure).
*28272	3	3	Capsulotomy for contracture; interphalangeal joint, single, each joint (separate procedure).
*28285	4	3	Hammertoe operation; one toe (e.g., interphalangeal fusion, filleting, phalangectomy) (separate procedure).
*28286	4	4	Hammertoe operation; for cock-up fifth toe with plastic skin closure, (Ruiz-Mora type procedure).
†*28290	4	2	Hallux valgus (bunion) correction, with or without sesamoidectomy; simple exostectomy (Silver type procedure).
†*28292	4	4	Hallux valgus (bunion) correction, with or without sesamoidectomy; Keller, McBride or Mayo type procedure.
†*28293	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; resection of joint with implant.
†*28294	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; with tendon transplants (Joplin type procedure).
†28296	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; with metatarsal osteotomy (e.g., Mitchell, Chevron, or concentric type procedures).
†28297	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; Lapidus type procedure.
*28298	4	3	Hallux valgus (bunion) correction with or without sesamoidectomy; by phalanx osteotomy.
†*28299	4	5	Hallux valgus (bunion) correction with or without sesamoidectomy; by other methods (e.g., double osteotomy).
*28306	4	4	Osteotomy, metatarsal, base or shaft, single, with or without lengthening for shortening or angular correction; first metatarsal
*28308	4	2	Osteotomy, metatarsal, base or shaft, single with or without lengthening, for shortening or angular correction; other than first metatarsal.
*28310	4	3	Osteotomy for shortening, angular or rotational correction; proximal phalanx, first toe (separate procedure).
*28312	4	3	Osteotomy for shortening, angular or rotational correction; other phalanges, any toe.
28315	3	4	Sesamoidectomy, first toe (separate procedure).
28320	4	4	Repair of nonunion or malunion; tarsal bones (calcaneus, talus, etc.).
28322	4	4	Repair of nonunion or malunion; metatarsal, with or without bone graft (includes obtaining graft).
Fracture and/or dislocation			
†28405	1	2	Treatment of closed calcaneal fracture; with manipulation including Cotton or Bohler type reductions.
†28406	2	2	Treatment of closed calcaneal fracture; with manipulation and skeletal fixation.
†28420	4	4	Open treatment of closed or open calcaneal fracture, with or without internal or external skeletal fixation; with primary iliac or other autogenous bone graft (includes obtaining graft).
†28435	1	2	Treatment of closed talus fracture; with manipulation.
†28436	2	2	Treatment of closed talus fracture; with manipulation and percutaneous pinning.
†28465	4	3	Open treatment of closed or open tarsal bone fracture (except talus and calcaneus), with or without internal or external skeletal fixation, each.
28485	4	4	Open treatment of closed or open metatarsal fracture, with or without internal or external skeletal fixation, each.
†28500	3	3	Treatment of open fracture great toe, phalanx or phalanges, with uncomplicated soft tissue closure.
28505	3	3	Open treatment of closed or open fracture great toe, phalanx or phalanges, with or without internal or external skeletal fixation.
†28520	2	3	Treatment of open fracture, phalanx or phalanges, other than great toe, with uncomplicated soft tissue closure, each.
28525	3	3	Open treatment of closed or open fracture, phalanx or phalanges, other than great toe, with or without internal or external skeletal fixation, each.
†28545	1	1	Treatment of closed tarsal bone dislocation; requiring anesthesia.
†28546	2	2	Treatment of closed tarsal bone dislocation, with percutaneous skeletal fixation.
†28555	4	2	Open treatment of closed or open tarsal bone dislocation, with or without internal or external skeletal fixation.
†28575	1	1	Treatment of closed talotarsal joint dislocation; requiring anesthesia.
†28585	4	3	Open treatment of closed or open talotarsal joint dislocation, with or without internal or external skeletal fixation.
†28605	1	1	Treatment of closed tarsometatarsal joint dislocation; requiring anesthesia.
†28606	2	2	Treatment of closed tarsometatarsal joint dislocation, with percutaneous skeletal fixation.
†28615	4	3	Open treatment of closed or open tarsometatarsal joint dislocation, with or without internal or external skeletal fixation.
†28645	4	3	Open treatment of closed or open metatarsophalangeal joint dislocation.
†28670	3	3	Treatment of open interphalangeal joint dislocation, with uncomplicated soft tissue closure.
†28675	4	3	Open treatment of closed or open interphalangeal joint dislocation.
Arthrodesis			
*28750	4	4	Arthrodesis, great toe; metatarsophalangeal joint.
*28755	4	4	Arthrodesis, great toe; interphalangeal joint.
†*28760	4	4	Arthrodesis, great toe, interphalangeal joint, with extensor hallucis longus transfer to first metatarsal neck (Jones type procedure).
Amputation			
*28810	2	2	Amputation, metatarsal, with toe, single.
†*28820	2	2	Amputation, toe; metatarsophalangeal joint.
†*28825	2	2	Amputation, toe; interphalanged joint.
Arthroscopy			
†29870	4	3	Arthroscopy, knee, diagnostic, with or without synovial biopsy (separate procedure).
†29871	4	3	Arthroscopy, knee, surgical; for infection, lavage and drainage.
†29872	4	3	Arthroscopy, knee, surgical; for infection, lavage and drainage with section irrigation.
†29874	4	3	Arthroscopy, knee, surgical; for removal of loose body or foreign body (e.g., osteochondritis dissecans fragmentation, chondral fragmentation).
29875	4	3	Arthroscopy, knee, surgical; synovectomy, limited (e.g., plica or shelf resection) (separate procedure).
†29876	4	3	Arthroscopy, knee surgical; synovectomy, major, two or more compartments (e.g., medial or lateral).
29877	4	3	Arthroscopy, knee, surgical; debridement/shaving of articular cartilage (chondroplasty).
†29879	4	3	Arthroscopy, knee, surgical; abrasion arthroplasty (includes chondroplasty where necessary) or multiple drilling.
†29881	4	3	Arthroscopy, knee, surgical; with meniscectomy (medial or lateral including any meniscal shaving).

	Payment groups		
	Old	New	
†29882	4	3	Arthroscopy, knee, surgical; with meniscus repair (medical OR lateral).
†29884	4	3	Arthroscopy, knee, surgical; with lysis of adhesions with or without manipulation (separate procedure)
†29886	4	3	Arthroscopy, knee, surgical; drilling for intact osteochondritis dissecans lesion.
†29887	4	3	Arthroscopy, knee, surgical; drilling for intact osteochondritis dissecans lesion with internal fixation.
			Respiratory system
			Nose
Excision			
*30115	2	2	Excision, nasal polyp(s), extensive; unilateral.
30116	2	2	Excision, nasal polyp(s), extensive; bilateral.
30117	2	3	Excision, intranasal lesion; internal approach.
†30118	2	3	Excision, intransal lesion; external approach (lateral rhinotomy).
†30125	3	2	Excision dermoid cyst, nose; complex, under bone or cartilage.
*30130	1	3	Excision turbinate, partial or complete.
†*30140	4	2	Submucous resection turbinate, partial or complete.
†30150	4	3	Rhinectomy; partial.
†30160	4	4	Rhinectomy; total.
Removal foreign body			
30310	1	1	Removal foreign body, intranasal; requiring general anesthesia.
†30320	2	2	Removal foreign body; by lateral rhinotomy.
Repair			
30400	4	4	Rhinoplasty, primary; lateral and alar cartilages and/or elevation of nasal tip.
30410	4	4	Rhinoplasty, primary; complete, external parts including bony pyramid, lateral and alar cartilages, and/or elevation of nasal tip.
30420	4	5	Rhinoplasty, primary; including major septal repair.
30430	4	3	Rhinoplasty, secondary; minor revision (small amount of nasal tip work).
30435	4	5	Rhinoplasty, secondary; intermediate revision (bony work with osteotomies).
30450	4	7	Rhinoplasty, secondary; major revision (nasal tip work and osteotomies).
30520	4	4	Septoplasty or submucous resection, with or without cartilage scoring, contouring or replacement with graft.
30580	4	4	Repair fistula; oromaxillary (combine with 31030 if antrotomy is included).
30600	4	4	Repair fistula; oronasal.
*30620	4	7	Reconstruction, functional, internal nose (septal or other intranasal dermatoplasty) (does not include obtaining graft).
*30630	4	7	Repair nasal septal perforations.
Other procedures			
†30915	4	2	Ligation arteries; ethmoidal.
†30920	4	3	Ligation arteries; internal maxillary artery, transantral.
			Accessory Sinuses
Incision			
†*31020	2	2	Sinusotomy, maxillary (antrotomy); intranasal, unilateral.
*31021	2	3	Sinusotomy, maxillary (antrotomy); intranasal, bilateral.
*31030	2	3	Sinusotomy, maxillary (antrotomy); radical, unilateral (Caldwell-Luc) without removal of antrochoanal polyps.
†*31031	2	3	Sinusotomy, maxillary (antrotomy); radical, bilateral (Caldwell-Luc) without removal of antrochoanal polyps.
31032	4	4	Sinusotomy, maxillary (antrotomy); radical unilateral (Caldwell-Luc) with removal antrochoanal polyps.
†31033	4	4	Sinusotomy, maxillary (antrotomy); radical, bilateral (Caldwell-Luc) with removal antrochoanal polyps.
†31070	2	2	Sinusotomy frontal; external, simple (trephine operation).
Excision			
*31200	3	2	Ethmoidectomy; intranasal, anterior.
*31201	3	5	Ethmoidectomy; intranasal, total.
†*31205	3	3	Ethmoidectomy; extranasal, total.
			Larynx
Endoscopy			
†*31505	1	1	Laryngoscopy, indirect (separate procedure); diagnostic.
†*31510	1	2	Laryngoscopy, indirect (separate procedure); with biopsy.
†*31511	1	2	Laryngoscopy, indirect (separate procedure); with removal of foreign body.
†*31512	1	2	Laryngoscopy, indirect (separate procedure); with removal of lesion.
†31513	2	2	Laryngoscopy, indirect (separate procedure); with vocal cord injection.
†*31515	1	1	Laryngoscopy direct with or without tracheoscopy; for aspiration.
†*31525	1	1	Laryngoscopy, direct; diagnostic, except newborn.
*31526	1	2	Laryngoscopy, indirect; diagnostic, with operating microscope.
†31527	2	1	Laryngoscopy, direct; with insertion of obturator.
*31530	1	2	Laryngoscopy, direct, operative, with foreign body removal.
*31531	1	3	Laryngoscopy, direct, operative, with foreign body removal; with operating microscope.
*31535	1	2	Laryngoscopy, direct, operative, with biopsy.
*31536	1	3	Laryngoscopy, direct, operative, with biopsy; with operating microscope.
*31540	1	3	Laryngoscopy, direct, operative, with excision of tumor and/or stripping of vocal cords or epiglottis.
*31541	1	4	Laryngoscopy, direct, operative, with excision of tumor and/or stripping of vocal cords or epiglottis; with operating microscope.
†*31560	1	5	Laryngoscopy, direct, operative, with arytenoidectomy.
†*31561	1	5	Laryngoscopy, direct, operative, with arytenoidectomy; with operating microscope.
*31570	1	2	Laryngoscopy, direct, with injection into vocal cord(s), therapeutic.
*31571	1	2	Laryngoscopy, direct, with injection into vocal cord(s), therapeutic; with operating microscope.
†31576	1	2	Laryngoscopy, flexible fiberscopic; with biopsy.
†31577	1	2	Laryngoscopy, flexible fiberscopic; with removal of foreign body.
†31578	1	2	Laryngoscopy, flexible fiberscopic; with removal of lesion.
			Trachea and Bronchi
Incision			
†31600	2	2	Tracheostomy, planned (separate procedure).
†31612	1	1	Tracheal puncture, percutaneous for aspiration of mucus (transtracheal aspiration).

	Payment groups		
	Old	New	
†31613	2	2	Tracheostoma revision; simple, without flap rotation.
†31614	2	2	Tracheostoma revision; complex, with flap rotation
Endoscopy			
†31615	1	1	Tracheobronchoscopy through established tracheostomy incision.
†31622	1	1	Bronchoscopy; diagnostic, (flexible or rigid), with or without cell washing or brushing.
*31625	1	2	Bronchoscopy; with biopsy.
†31628	1	2	Bronchoscopy; with transbronchial lung biopsy, with or without fluoroscopic guidance.
†*31630	1	2	Bronchoscopy; with tracheal or bronchial dilation or closed reduction of fracture.
†31631	1	2	Bronchoscopy; with tracheal dilation and placement of tracheal stent.
†*31635	1	2	Bronchoscopy; with removal of foreign body.
†*31640	1	2	Bronchoscopy; with excision of tumor.
†31641	1	2	Bronchoscopy; with destruction of tumor or relief of stenosis by any method other than excision (e.g., laser).
†*31645	1	1	Bronchoscopy; with therapeutic aspiration of tracheobronchial tree, initial (e.g., drainage of lung abscess).
†31646	1	1	Bronchoscopy; with therapeutic aspiration of tracheobronchial tree, subsequent.
†31656	1	1	Bronchoscopy; with injection of contrast material for segmental bronchography (fiberscope only).
†31659	1	1	Bronchoscopy; with other bronchoscopic procedures.
Introduction			
†31700	1	1	Catheterization, transglottic (separate procedure).
†31708	1	1	Instillation of contrast material for laryngography or bronchography, without catheterization.
†31710	1	1	Catheterization for bronchography, with or without instillation of contrast material.
†31715	1	1	Transtracheal injection for bronchography.
†31717	1	1	Catheterization with bronchial brush biopsy.
†31719	1	1	Transtracheal (percutaneous) introduction of indwelling tube for therapy (tickle tube).
†31720	1	1	Catheter aspiration (separate procedure); nasotracheobronchial.
			Cardiovascular system
Ligation and other procedures			
37609	1	2	Ligation or biopsy, temporal artery.
†*37700	4	2	Ligation and division of long saphenous vein at saphenofemoral junction, or distal interruptions, unilateral.
†*37701	4	3	Ligation and division of long saphenous vein at saphenofemoral juncton, or distal interruptions; bilateral.
†*37720	4	3	Ligation and division and complete stripping of long or short saphenous veins; unilateral.
†*37721	4	4	Ligation and division and complete stripping of long or short saphenous veins; bilateral.
†*37730	4	3	Ligation and division and complete stripping of long and short saphenous veins; unilateral.
†*37731	4	4	Ligation and division and complete stripping of long and short saphenous veins: bilateral.
†37735	4	3	Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep fascia; unilateral.
†37737	4	3	Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep facia; bilateral.
†37760	4	3	Ligation of perforators, subfascial, radical (Linton Type), with or without skin graft.
*37780	4	3	Ligation and division of short saphenous vein at saphenopopliteal junction (separate procedure); unilateral.
†*37781	4	3	Ligation and division of short saphenous vein at saphenopopliteal junction (separate procedure); bilateral.
37785	3	3	Ligation, division and/or excision of secondary varicose veins (clusters) of leg; unilateral.
37787	3	3	Ligation, division and/or excision of secondary varicose veins (clusters) of leg; bilateral.
			Hemic and lymphatic system
			Lymph Nodes and Lymphatic Channels
Incision			
†38305	1	2	Drainage of lymph node abscess or lymphadenitis; extensive.
†38308	1	2	Lymphangiotomy or other operations on lymphatic channels.
Excision			
*38500	2	2	Biopsy or excision of lymph node(s); superficial (separate procedure).
*38510	2	2	Biopsy or excision of lymph node(s); deep, cervical node(s).
*38520	2	2	Biopsy or excision of lymph node(s); deep cervical node(s) with excision scalene fat pad.
†38530	3	2	Biopsy or excision of lymph node(s); internal mammary node(s) (separate procedure).
†38542	3	2	Dissection; deep jugular node(s).
38550	3	3	Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; simple.
†38555	4	4	Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; complex.
Radical lymphadenectomy (radical resection of lymph nodes).			
†38700	4	2	Suprahyoid lymphadenectomy; unilateral.
†38701	4	3	Suprahyoid lymphadenectomy; bilateral.
38740	3	2	Axillary lymphadenectomy; superficial.
38745	3	4	Axillary lymphadenectomy; complete.
†38760	3	2	Inguinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); unilateral.
†38761	3	3	Inguinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); bilateral.
Introduction			
†38790	1	1	Injection procedure for lymphangiography; unilateral.
†38791	1	1	Injection procedure for lymphangiography; bilateral.
			Digestive system
			Lips
Excision			
†*40500	2	2	Vermilionectomy (lip shave), with mucosal advancement.
†*40510	3	2	Excision of lip; transverse wedge excision with primary closure.
*40520	3	2	Excision of lip; V-excision with primary direct linear closure.
†40525	3	2	Excision lip; full thickness, reconstruction with local flap (Estlander or fan).
†40527	3	2	Excision lip; full thickness, reconstruction with cross lip flap (Abbe-Estlander).
40530	3	2	Resection of lip, more than one-fourth, without reconstruction.

	Payment groups		
	Old	New	
Repair (Cheiloplasty)			
40650	3	3	Repair lip, full thickness; vermilion only.
†40652	3	3	Repair lip, full thickness; up to half vertical height.
†40654	4	3	Repair lip, full thickness; over one half vertical height, or complex.
			Vestibule of Mouth
Incision			
40801	1	2	Drainage of abscess, cyst, hematoma, vestibule of mouth; complicated.
†40805	1	2	Removal of embedded foreign body; complicated.
Excision, destruction			
†40814	2	2	Excision of lesion of mucosa and submucosa; with complex repair.
40816	2	2	Excision of lesion of mucosa and submucosa; complex with excision of underlying muscle.
†40818	2	1	Excision of mucosa as donor graft.
Repair			
†40831	2	1	Closure of laceration, vestibule of mouth; over 2.5 cm or complex.
†40840	2	2	Vestibuloplasty; anterior.
†40842	2	3	Vestibuloplasty; posterior, unilateral.
†40843	2	3	Vestibuloplasty; posterior, bilateral.
†40844	3	5	Vestibuloplasty; entire arch.
†40845	4	5	Vestibuloplasty; complex (include ridge extension, muscle repositioning).
			Tongue, Floor of Mouth
Incision			
†*41000	1	1	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; lingual.
†*41005	1	1	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, superficial.
Excision			
*41100	1	2	Biopsy of tongue; anterior two thirds.
*41105	1	2	Biopsy of tongue; posterior one-third.
†41114	2	2	Excision of lesion of tongue with closure; with local tongue flap.
41115	1	1	Excision of lingual frenum (frenectomy).
41116	1	1	Excision lesion of floor of mouth.
41120	3	5	Glossectomy; less than one-half tongue.
Repair			
†41251	3	2	Repair of laceration 2.5 cm or less; posterior one-third of tongue.
			Dentoalveolar Structures
Incision			
41806	2	1	Removal embedded foreign body from dentoalveolar structure; bone.
Excision, destruction			
41826	2	2	Excision of lesion or tumor (except listed above) dentoalveolar structure; with simple repair.
†41827	3	2	Excision of lesion or tumor (except listed above) dentoalveolar structure; with complex repair.
			Palate, Uvula
Incision			
*42000	1	2	Drainage of abscess of palate, uvula.
Excision, destruction			
42104	1	2	Excision, lesion of palate, uvula; without closure.
†42106	1	2	Excision, lesion of palate, uvula; with simple primary closure.
†42107	1	2	Excision, lesion of palate, uvula; with local flap closure.
†42120	2	4	Resection of palate or extensive resection of lesion.
42140	2	2	Uvulectomy, excision of uvula.
Repair			
†42182	1	2	Repair laceration of palate; over 2 cm or complex.
			Salivary Gland and Ducts
Incision			
†42305	1	2	Drainage of abscess; parotid, complicated.
†42320	1	1	Drainage of abscess; submaxillary external.
†42325	2	2	Fistulization of sublingual salivary cyst (ranula).
42335	2	2	Sialolithotomy; submandibular (submaxillary), complicated, intraoral.
†42340	2	2	Sialolithotomy; parotid, extraoral or complicated intraoral.
Excision			
42408	2	3	Excision of sublingual salivary cyst (ranula).
42410	4	3	Excision of parotid tumor or parotid gland; lateral lobe, without nerve dissection.
†42440	4	3	Excision of submandibular (submaxillary) gland.
†42450	4	2	Excision of sublingual gland.
Repair			
†42500	3	3	Plastic repair of salivary duct, sialodochoplasty; primary or simple.
†42505	4	4	Plastic repair salivary duct, sialodochoplasty; secondary or complicated.
†42507	4	3	Parotid duct diversion, bilateral (Wilke type procedure).
†42508	4	4	Parotid duct diversion, bilateral (Wilke type procedure); with excision of one submandibular gland.
†42509	4	4	Parotid duct diversion, bilateral (Wilke type procedure); with excision of both submandibular glands.
Other procedures			
†42600	1	1	Closure salivary fistula.
†42665	1	1	Ligation salivary duct, intraoral.
			Pharynx, Adenoids, and Tonsils
Incision			
†42720	1	1	Incision and drainage abscess; retropharyngeal or parapharyngeal, intraoral approach.
†42725	1	2	Incision and drainage abscess; retropharyngeal or parapharyngeal, external approach.
Excision			
42806	2	2	Biopsy; nasopharynx, survey for unknown primary lesion.
42808	1	2	Excision of lesion of pharynx.

	Payment groups		
	Old	New	
*42810	2	3	Excision branchial cleft cyst or vestige, confined to skin and subcutaneous tissues.
*42815	2	5	Excision branchial cleft cyst, vestige or fistula and/or into pharynx extending beneath subcutaneous tissues.
42860	2	3	Excision of tonsil tags.
42870	2	3	Excision lingual tonsil (separate procedure).
42880	2	5	Excision nasopharyngeal lesion (e.g , fibroma).
Repair			
†42900	2	1	Suture pharynx for wound or injury.
42950	4	2	Pharyngoplasty (plastic or reconstructive operation on pharnyx).
Other procedures			
†42955	2	2	Pharyngostomy (fistulization of pharynx, external for feeding).
			Esophagus
Endoscopy			
*43200	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); diagnostic procedure.
†*43202	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for biopsy and/or collection of specimen by brushing or washing.
†43204	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for injection sclerosis of esophageal varices.
†*43215	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for removal of foreign body.
†*43217	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for removal of polypoid lesion(s).
†43219	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of plastic tube or stent.
*43220	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for dilation, direct any method.
†43226	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of wire to guide dilation.
†43227	1	2	Esophagoscopy, rigid or flexible fiberoptic (specify); for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
43228	1	2	Esophagoscopy, rigid or flexible fiberoptic (specify); for ablation of tumor or mucosal lesion (e.g. electrocoagulation, laser photocoagulation.
43235	1	1	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; complex diagnostic.
43239	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for biopsy and/or collection of specimen by brushing or washing.
43247	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of foreign body.
†43251	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of polypoid lesion(s).
†43255	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
†43258	1	3	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for ablation of tumor or mucosal lesion (e.g., electrocoagulation, laser photocoagulation, hot biopsy/fulguration).
†43260	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and or collection of specimen.
†43262	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; fcr sphincterotomy/papillotomy.
†43263	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for pressure measurement of sphincter of Oddi.
†43264	2	2	Endoscopic retrograde cholangiopancreatography (ERCP). with or without biopsy and/or collection of specimen; for removal of stone(s) from biliary and/or pancreatic ducts.
Manipulation			
43450	1	1	Dilation of esophagus, by unguided sound or bougie single or multiple passes; initial session.
43451	1	1	Dilation of esophagus, by unguided sound or bougie single or multiple passes; subsequent session.
†43453	1	1	Dilation of esophagus, over guide wire or string.
†43455	1	2	Dilation of esophagus, by balloon or Stark dilator.
†43456	1	2	Dilation of esophagus by balloon or Stark dilator; retrograde.
			Intestines (except rectum)
Enterostomy—external fistulization of intestines (separate procedure)			
*44340	3	3	Revision of colostomy; simple (release of superficial scar).
†44345	4	4	Revision of colostomy; complicated (reconstruction in depth).
†44346	4	4	Revision of colostomy; with repair of paracolostomy hernia.
Endoscopy, small bowel and stomai			
†44360	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; diagnostic.
†44361	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for biopsy and/or collection of specimen by brushing or washing.
†44363	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of foreign body.
†44364	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of polypoid lesion(s).
†44366	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
†44369	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for ablation of tumor or mucosal lesion (e.g., laser hot biopsy/fulguration).
†44380	1	1	Fiberoptic ileoscopy through stoma.
†41382	1	1	Fiberoptic ileoscopy through stoma; with biopsy and/or collection of specimen by brushing or washing.
†44388	1	1	Fiberoptic colonoscopy through colostomy.
†44389	1	1	Fiberoptic colonoscopy through colostomy; for biopsy and/or collection of specimen by brushing or washing.
†44390	1	1	Fiberoptic colonoscopy through colostomy; for removal of foreign body.
†44391	1	1	Fiberoptic colonoscopy through colostomy; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).

	Payment groups		
	Old	New	
†44392	1	1	Fiberoptic colonoscopy through colostomy; for removal of polypoid lesion(s).
			Rectum
Incision			
†45000	3	1	Transrectal drainage of pelvic abscess.
45005	1	2	Incision and drainage of submucosal abscess, rectum.
†45020	2	2	Incision and drainage of deep supralevator, pelvirectal, or retrorectal abscess.
Excision			
45170	3	2	Excision of rectal tumor, transanal approach.
†45180	3	3	Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach.
†45331		1	Sigmoidoscopy, flexible fiberoptic; for biopsy and/or collection of specimen by brushing or washing.
†45333		1	Sigmoidoscopy, flexible fiberoptic; for removal of polypoid lesion(s).
45334		1	Sigmoidscopy, flexible fiberoptic; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
Endoscopy			
45355	1	1	Colonoscopy, with standard sigmoidoscope, transabdominal via colotomy, single or multiple.
45378	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; diagnostic procedure.
†45379	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for removal of foreign body.
45380	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for biopsy and/or collection of specimen by brushing or washing.
45382	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
†45383			
45385	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for removal of polypoid lesion(s).
Repair			
†45500	4	2	Proctoplasty; for stenosis.
45505	4	2	Proctoplasty; for prolapse of mucous membrane.
†45521	1	1	Perirectal injection of sclerosing solution for prolapse; hospital.
†45560	4	2	Repair of rectocele (separate procedure).
Manipulation			
†45900	1	1	Reduction of procidentia (separate procedure) under anesthesia.
*45910	1	1	Dilation of rectal structure (separate procedure) under anesthesia other than local.
†45915	1	1	Removal of fecal impaction or foreign body (separate procedure) under anesthesia.
			Anus
Incision			
46000	2	3	Fistulotomy, subcutaneous.
46040	2	3	Incision and drainage of ischiorectal and/or perirectal abscess (separate procedure).
†46045	2	2	Incision and drainage of intramural, intramuscular or submucosal abscess, transanal, under anesthesia.
†*46060	2	2	Incision and drainage of ischiorectal or intramural abscess, with fistulectomy, submuscular.
46080	2	3	Sphincterotomy, anal, division of sphincter (separate procedure).
Excision			
46200	2	2	Fissurectomy, with or without sphincterotomy.
†46211	2	2	Cryptectomy; multiple (separate procedure).
†*46250	3	3	Hemorrhoidectomy, external, complete.
*46255	3	3	Hemorrhoidectomy internal and external, simple.
*46257	3	3	Hemorrhoidectomy internal and external, simple; with fissurectomy.
†*46258	3	3	Hemorrhoidectomy internal and external, simple; with fistulectomy, with or without fissurectomy.
†46260	2	3	Hemorrhoidectomy, internal and external, complex or extensive.
†46261	2	4	Hemorrhoidectomy, internal and external, complex or extensive; with fissurectomy.
†*46262	2	4	Hemorrhoidectomy, internal and external, complex or extensive; with fistulectomy, with or without fissurectomy.
*46270	2	3	Fistulectomy; subcutaneous.
†*46275	2	3	Fistulectomy; submuscular.
*46280	2	4	Fistulectomy; complex or multiple.
†46285	2	1	Fistulectomy; second stage.
			Repair
Introduction			
†46750	4	3	Sphincteroplasty, anal, for incontinence or prolapse; adult.
†46753	4	3	Graft (Thiersch operation) for rectal incontinence and/or prolapse.
†46754	4	2	Removal of Thiersch wire or suture, anal canal.
†46760	4	2	Sphincteroplasty, anal, for incontinence, adult, muscle transplant.
Destruction			
†46924	1	1	Destruction of lesion(s), anus (e.g., condyloma, papilloma, molluscum contagiosum, herpetic vesicle), extensive, any method.
†46937	2	2	Cryosurgery of rectal tumor; benign.
†46938	2	2	Cryosurgery of rectal tumor; malignant.
			Liver
Incision			
*47000	2	1	Biopsy of liver, percutaneous needle.
			Abdomen, peritoneum, and omentum
Incision			
49000	4	4	Exploratory laparotomy, exploratory celiotomy with or without biopsy(s) (separate procedure).
Endoscopy			
†*49300	4	2	Peritoneoscopy; without biopsy.
†*49301	4	3	Peritoneoscopy; with biopsy.
†49302	4	3	Peritoneoscopy with guided transhepatic cholangiography; without biopsy.
†49303	4	3	Peritoneoscopy with guided transhepatic cholangiography; with biopsy.
Introduction			
†49400	1	1	Pneumoperitoneum (separate procedure); initial.

	Payment groups		
	Old	New	
†49401	1	1	Pneumoperitoneum (separate procedure); subsequent.
†49420	1	1	Insertion of intraperitoneal cannula or catheter for drainage or dialysis; temporary.
†49421	1	1	Insertion of intraperitoneal cannula or catheter for drainage or dialysis; permanent.
†49425	1	2	Peritoneal venous shunt (e.g., Le Veen shunt).
†49426	1	2	Revision of peritoneal-venous shunt.
Repair			
Hernioplasty, herniorrhaphy, herniotomy			
*49505	4	4	Repair inguinal hernia, age 5 or over.
49510	4	4	Repair inguinal hernia, age 5 or over; with orchiectomy, with or without implantation of prosthesis.
*49515	4	5	Repair inguinal hernia, age 5 or over; with excision of hydrocele or spermatocele.
*49520	4	7	Repair inguinal hernia, any age; recurrent.
†*49525	4	4	Repair inguinal hernia, any age; sliding.
†49540	4	2	Repair lumbar hernia.
*49550	4	4	Repair femoral hernia, groin incision.
†49552	4	4	Repair femoral hernia, Henry approach.
*49555	4	5	Repair femoral hernia, recurrent, any approach.
*49560	4	4	Repair ventral (incisional) hernia (separate procedure).
*49565	4	4	Repair ventral (incisional) hernia (separate procedure); recurrent.
49570	4	4	Repair epigastric hernia, properitoneal fat (separate procedure); simple.
†49575	4	4	Repair epigastric hernia, properitoneal fat (separate procedure); complex.
49581	4	4	Repair umbilical hernia; age 5 or over.
†49590	4	3	Repair spigelian hernia.
			Urinary system
			Kidney
Incision			
†50020	3	2	Drainage of perirenal or renal abscess (separate procedure).
†50040	4	3	Nephrostomy, nephrotomy with drainage.
Excision			
†50200	1	1	Renal biopsy; percutaneous, by trocar or needle.
†50205	4	3	Renal biopsy; by surgical exposure of kidney.
Introduction			
†50390	1	1	Aspiration and/or injection of renal cyst or pelvis by needle, percutaneous.
†50392	1	1	Introduction of intracatheter or catheter into renal pelvis for drainage and/or injection, percutaneous.
†50393	1	1	Introduction of ureteral catheter or stent into ureter through renal pelvis for drainage and/or injection, percutaneous.
50394	1	1	Injection procedure for pyelography (as nephrostogram, pyelostogram, antegrade pyeloureterograms) through nephrostomy or pyelostomy tube, or indwelling ureteral catheter (separate procedure).
†50396	1	1	Manometric studies through nephrostomy or pyelostomy tube, or indwelling ureteral catheter.
†50398	1	1	Change of nephrostomy or pyelostomy tube.
Endoscopy			
†50553	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization, with or without dilation of ureter.
†50559	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration.
†50561	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
†50570	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
†50572	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization with or without dilation of ureter.
†50576	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration and/or incision, with or without biopsy.
†50578	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration.
†50580	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
			Ureter
Introduction			
†50684	1	1	Injection procedure for ureterography or ureteropyelography through ureterostomy or indwelling ureteral catheter (separate procedure).
†50690	1	1	Injection procedure for visualization of ilial conduit and/or ureteropyelography, exclusive of radiologic service (separate procedure).
Endoscopy			
†50953	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization, with or without dilation of ureter.
†50955	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
50957	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration and/or incision, with or without biopsy.
†50959	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration (not including provision of material).
†50961	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.

	Payment groups		
	Old	New	
†50970	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
†50972	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization, with or without dilation or ureter.
†50974	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
†50976	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration and/or incision, with or without biopsy.
†50978	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration (not including provision of material).
†50980	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
			Bladder
Incision			
†51005	1	1	Aspiration of bladder; by trocar or intracatheter.
†51010	1	1	Aspiration of bladder; with insertion of suprapubic catheter.
Introduction			
51600	1	1	Injection procedure for cystography or voiding urethrocystography.
†51605	1	1	Injection procedure and placement of chain for contrast and/or chain urethrocystography.
†51610	1	1	Injection procedure for retrograde urethrocystography.
†51710	1	1	Change of cystostomy tube; complicated.
			Bladder
Repair			
†51865	4	4	Cystorrhaphy, suture of bladder wound, injury or rupture; complicated.
†51900	4	4	Closure of vesicovaginal fistula, abdominal approach.
			Ureter
Endocopy-cystoscopy, urethroscopy cystourethroscopy notes			
†*52000	1	1	Cystourethroscopy (separate procedure).
†52005	1	2	Cystourethroscopy, with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
†52007	1	2	Cystourethroscopy, with uretheral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with brush biopsy of ureter and/or renal pelvis.
†52010	1	2	Cystourethroscopy, with ejaculatory duct catheterization, with or without irrigation, instillation, or duct radiography, exclusive of radiologic service.
			Bladder
Transurethral surgery (urethra, and bladder)			
52204	3	2	Cystourethroscopy, with biopsy.
52214	3	2	Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) of trigone, bladder neck, prostatic fossa, urethra, or periurethral glands.
†52224	3	2	Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) or treatment of Minor (less than 0.5 cm) lesion(s), with or without biopsy.
52234	3	2	Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) and/or resection of; Small bladder tumor(s) (0.5 to 2.0 cm).
†52235	3	3	Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; Medium bladder tumor(s) (2.0 to 5.0 cm).
†52240	3	3	Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; Large bladder tumor(s).
52250	3	4	Cystourethroscopy with insertion of radioactive substance, with or without biopsy or fulguration.
52260	3	2	Cystourethroscopy, with dilation of bladder for interstitial cystitis; general or conduction (spinal) anesthesia.
†52270	3	2	Cystourethroscopy, with internal urethrotomy; female.
†52275	3	2	Cystourethroscopy, with internal urethrotomy; male.
†52276	3	3	Cystourethroscopy with direct vision internal urethrotomy.
†52277	3	2	Cystourethroscopy, with resection of external sphincter (sphincterotomy).
52281	3	2	Cystourethroscopy, with calibration and/or dilation of urethral stricture or stenosis, with or without meatotomy and injection procedure for cystography, male or female.
†52283	3	2	Cystourethroscopy, with steroid injection into stricture.
†52285	3	2	Cystourethroscopy for treatment of the female urethral syndrome with any or all of the following: urethral meatotomy, urethral dilation, internal urethrotomy, lysis of urethrovaginal septal fibrosis, lateral incisions of the bladder neck, and fulguration of polyp(s) of urethra, bladder neck, and/or trigone.
52290	3	2	Cystourethroscopy; with ureteral meatotomy, unilateral or bilateral.
52300	3	2	Cystourethroscopy; with resection or fulguration of ureterocele(s), unilateral or bilateral.
†52305	3	2	Cystourethroscopy; with incision or resection of orifice of bladder diverticulum, single or multiple.
†52310	4	2	Cystourethroscopy, with removal of foreign body, calculus or ureteral stent from urethra or bladder (separate procedure); simple.
†52315	4	2	Cystourethroscopy, with removal of foreign body, calculus or ureteral stent from urethra or bladder (separate procedure); complicated.
†52317	4	1	Litholapaxy: crushing of fragmentation or calculus by any means in bladder and removal of fragments, simple; small (less than 2.5 c.m.).
†52318	4	2	Litholapaxy: crushing of fragmentation or calculus by any means in bladder and removal of fragments, simple; complicated or large (over 2.5 c.m.).
Transurethral surgery (ureter and pelvis)			
52320	4	5	Cystourethroscopy (including ureteral catheterization); with removal of ureteral calculus.
†52330	4	2	Cystourethroscopy (including ureteral catheterization); with manipulation, without removal of ureteral calculus.
52332	4	2	Cystourethroscopy, with insertion of indwelling ureteral stent (e.g., Gibbons or double-J type).

	Payment groups		
	Old	New	
†52335	3	3	Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method)
Transuretheral surgery (vesical neck and prostate)			
†52340	3	3	Cystourethroscopy with incision, fulguration, or resection of bladder neck and/or posterior urethra (congenital valves, obstructive hypertrophic mucosal folds).
52500	3	3	Transurethral resection of bladder neck (separate procedure)
†52601	4	4	Transurethral resection of prostate including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, and internal urethrotomy are included)
†52606	4	1	Transurethral fulguration for postoperative bleeding occurring after the usual follow-up time
†52612	4	2	Transurethral resection of prostate; first stage of two-stage resection (partial resection).
†52614	4	1	Transurethral resection of prostate; second stage of two-stage resection (resection completed)
†52620	4	1	Transurethral resection; of residual obstructive tissue after 90 days postoperative
†52630	4	2	Transurethral resection; of regrowth of obstructive tissue longer than one year postoperative
†52640	4	2	Transurethral resection; of postoperative bladder neck contracture
†52650	4	2	Transurethral cryosurgical removal of prostate (postoperative irrigations and aspiration of sloughing tissue included).
†52700	4	2	Transurethral drainage of prostatic abscess
			Urethra
Incision			
†53000	2	1	Urethrotomy or urethrostomy, external (separate procedure); pendulous urethra
†53010	2	1	Urethrotomy or urethrostomy, external (separate procedure); perineal urethra external
†53020	2	1	Meatotomy, cutting of meatus (separate procedure); except infant
†53040	2	2	Drainage of deep periurethral abscess
Excision			
†53220	3	2	Excision or fulguration of carcinoma of urethra.
†53230	3	2	Excision of urethral diverticulum (separate procedure); female
†53235	3	3	Excision of urethral diverticulum (separate procedure); male
†53240	3	2	Marsupialization of urethral diverticulum, male or female.
53265	3	2	Excision or fulguration; urethral caruncle
†53275	3	2	Excision or fulguration; urethral prolapse
Repair			
53400	4	3	Urethroplasty; first stage, for fistula, diverticulum, or stricture, e.g., Johannsen type
†53405	4	2	Urethroplasty; second stage (formation of urethra), including urinary diversion
†53410	4	2	Urethroplasty, one-stage reconstruction of male anterior urethra.
†53420	4	3	Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra, first stage
†53425	4	2	Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; second stage
†53430	4	2	Urethroplasty, reconstruction of female urethra.
†53440	4	2	Operation for correction of male urinary incontinence, with or without introduction of prosthesis
†53447	4	1	Removal, repair or replacement of inflatable sphincter including pump and/or reservoir and/or cuff
†53449	4	1	Surgical correction of hydraulic abnormality of inflatable sphincter device
†53450	4	1	Urethromeatoplasty, with mucosal advancement.
†53460	4	1	Urethromeatoplasty, with partial excision of distal urethral segment (Richardson type procedure)
Suture			
†53502	4	2	Urethrorrhaphy, suture of urethral wound or injury, female.
†53510	4	2	Urethrorrhaphy, suture of urethral wound or injury; perineal.
†53515	4	2	Urethrorrhaphy, suture of urethral wound or injury; prostatomembranous.
†53520	4	2	Closure of urethrostomy or urethrocutaneous fistula, male (separate procedure)
Manipulation			
†*53600	1	1	Dilation of urethral stricture by passage of sound or urethral dilator male; initial.
*53601	1	1	Dilation of urethral stricture by passage of sound or urethral dilator, male; subsequent.
*53605	1	2	Dilation of urethral stricture of vesical neck by passage of sound or urethral dilator, male, general or conduction (spinal) anesthesia.
*53620	1	1	Dilation of urethral stricture by passage of filiform and follower, male; initial.
†*53621	1	1	Dilation of urethral stricture by passage of filiform and follower, male; subsequent.
*53660	1	1	Dilation of female urethra including suppository and/or instillation; initial.
†*53661	1	1	Dilation of female urethra including suppository and/or instillation; subsequent.
*53665	1	1	Dilation of female urethra, general or conduction (spinal) anesthesia.
			Male genital system
			Penis
Incision			
54001	1	2	Slitting of prepuce, dorsal or lateral, (separate procedure); except newborn.
Excision			
54105	1	1	Biopsy of penis; deep structures.
54110	3	2	Excision of penile plaque (Peyronie disease).
†54115	3	1	Removal foreign body from deep penile tissue (e.g., plastic implant).
†54120	3	2	Amputation of penis; partial.
†54125	4	2	Amputation of penis; complete.
†54152	2	1	Circumcision, clamp procedure; except newborn.
54161	2	2	Circumcision, surgical excision other than clamp or dorsal slit; except newborn.
Introduction			
†54205	1	1	Injection procedure for Peyronie disease; with surgical exposure of plaque.
†54220	1	1	Irrigation of corpora cavernosa for priapism.
†54230	1	1	Injection procedure for corpora cavernosography.
Repair			
54440	4	5	Plastic operation of penis for injury.
			Testis
Excision			
†54505	1	1	Biopsy of testis, incisional (separate procedure; unilateral.

	Payment groups		
	Old	New	
†54506	1	2	Biopsy of testis, incisional (separate procedure); bilateral.
54510	1	2	Excision of local lesion of testis.
*54520	2	3	Orchiectomy, simple (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach; unilateral.
*54521	2	4	Orchiectomy, simple (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach; bilateral.
*54530	3	4	Orchiectomy, radical, for tumor; inguinal approach.
Repair			
54670	2	3	Suture or repair of testicular injury.
†54680	4	3	Transplantation of testis(es) to thigh (because of scrotal destruction).
			Epididymis
Incision			
54700	2	2	Incision and drainage of epididymis, testis and/or scrotal space (e.g., abscess or hematoma).
Excision			
†54820	1	1	Exploration of epididymis, with or without biopsy.
54830	2	3	Excision of local lesion of epididymis.
*54840	3	4	Excision of spermatocele, with or without epididymectomy.
†54860	3	3	Epididymectomy; unilateral.
†54861	3	4	Epididymectomy; bilateral.
Repair			
†54900	3	4	Epididymovasostomy, anastomosis of epididymis to vas deferens; unilateral.
†54901	3	4	Epididymovasostomy, anastomosis of epididymis to vas deferens; bilateral.
			Tunica Vaginalis
Excision			
*55040	3	3	Excision of hydrocele; unilateral.
*55041	3	5	Excision of hydrocele; bilateral.
Repair			
55060	3	4	Repair of tunica vaginalis hydrocele (Bottle type).
			Scrotum
Incision			
55120	1	2	Removal of foreign body in scrotum.
Excision			
†55150	3	1	Resection of scrotum.
Repair			
†55175	3	1	Scrotoplasty; simple.
†55180	3	2	Scrotoplasty; complicated.
			Vas Deferens
Repair			
†55400	3	1	Vasovasostomy, vasovasorrhaphy; unilateral.
55401	3	5	Vasovasostomy, vasovasorrhaphy; bilateral.
			Spermatic Cord
Excision			
55500	3	3	Excision of hydrocele of spermatic cord, unilateral (separate procedure).
55520	3	4	Excision of lesion of spermatic cord (separate procedure).
*55530	4	4	Excision of varicocele or ligation of spermatic veins for varicocele; (separate procedure).
†55535	4	4	Excision of varicocele or ligation of spermatic veins for varicocele; abdominal approach.
55540	4	5	Excision of varicocele or ligation of spermatic veins for varicocele; with hernia repair.
			Seminal Vesicles
Incision			
†55605	1	1	Vesiculotomy; complicated.
Excision			
†55650	4	1	Vesiculectomy, any approach; unilateral.
†55651	4	2	Vesiculectomy, any approach; bilateral.
†55680	4	1	Excision of Mullerian duct cyst.
			Prostate
Incision			
55700	1	2	Biopsy, prostate; needle or punch, single or multiple, any approach.
*55705	1	2	Biopsy, prostate; incisional any approach.
†55720	1	1	Prostatotomy, external drainage of prostatic abscess, any approach; simple.
			Female genital system
			Perineum
Incision			
56000	2	2	Incision and drainage of perineal abscess (nonobstetrical).
			Vulva and Introitus
Incision			
†56440	3	2	Marsupialization of Bartholin's gland cyst.
Destruction			
56515	3	3	Destruction of lesion(s), vulva; extensive, any method.
Excision			
56740	3	3	Excision of Bartholin's gland or cyst.
			Vagina
Incision			
57020	1	2	Colpocentesis (separate procedure).
Excision			
57105	3	2	Biopsy of vaginal mucosa; extensive, requiring suture (including cysts).
57130	3	2	Excision of vaginal septum.

	Payment groups		
	Old	New	
Repair			
†57268	4	3	Repair of enterocele, vaginal approach (separate procedure).
Manipulation			
*57400	1	2	Dilation of vagina under anesthesia.
*57410	1	2	Pelvic examination under anesthesia.
Endoscopy			
*57450	1	1	Culdoscopy, diagnostic.
			Cervix uteri
Excision			
57520	2	2	Biopsy of cervix, circumferential (cone), with or without dilation and curettage, with or without Sturmdorff type repair.
Repair			
57720	3	3	Trachelorrhaphy, plastic repair of uterine cervix, vaginal approach.
Manipulation			
57820	2	3	Dilation and curettage of cervical stump.
			Corpus uteri
Excision			
*58120	3	2	Dilation and curettage, diagnostic and/or therapeutic (nonobstetrical).
			Ovary
Excision			
58900	4	3	Biopsy of ovary, unilateral or bilateral (separate procedure).
Endoscopy-laparoscopy			
†*58980	4	3	Laparoscopy for visualization of pelvic viscera.
*58984	4	5	Laparoscopy for visualization of pelvic viscera; with fulguration of ovarian or peritoneal lesions by an method.
*58985	4	4	Laparoscopy for visualization of pelvic viscera; with lysis of adhesions.
*58986	4	4	Laparoscopy for visualization of pelvic viscera; with biopsy (single or multiple).
*58987	4	4	Laparoscopy for visualization of pelvic viscera; with aspiration (single or multiple).
			Endocrine system
			Thyroid Gland
Excision			
†60200	3	2	Excision of cyst or adenoma of thyroid, or transection of isthmus.
†60220	4	2	Total thyroid lobectomy, unilateral.
†60225	4	3	Total thyroid lobectomy, unilateral; with contralateral subtotal lobectomy, including isthmus.
*60280	3	4	Excision of thyroglossal duct cyst or sinus.
			Nervous system
			Skull, Meninges, and Brain
Puncture for injection, drainage or aspiration			
†61020	1	1	Ventricular puncture through previous burr hole, fontanelle, suture, or implanted ventricular catheter/reservoir; without injection.
†61026	1	1	Ventricular puncture through previous burr hole, fontanelle, suture, or implanted ventricular catheter/reservoir; with injection of drug or other substance for diagnosis or treatment.
†61050	1	1	Cisternal or lateral cervical puncture; without injection (separate procedure).
†61070	1	1	Puncture of shunt tubing or reservoir for aspiration or injection procedure.
			Spine and Spinal Cord
Puncture for injection, drainage, or aspiration			
62270	1	1	Spinal puncture, lumbar, diagnostic.
62273	1	1	Injection, lumbar epidural, of blood or clot patch.
62274	1	1	Injection of anesthetic substance (including narcotics), diagnostic or therapeutic; subarachnoid or subdural, single.
62276	1	1	Injection of anesthetic substance (including narcotics), diagnostic or therapeutic; subarachnoid or subdural, differential.
†62277	1	1	Injection of anesthetic substance (including narcotics), diagnostic or therapeutic; subarachnoid or subdural, continuous.
62278	1	1	Injection of anesthetic substance (including narcotics), diagnostic or therapeutic; lumbar or caudal epidural, single.
62279	1	1	Injection of anesthetic substance (including narcotics), diagnostic or therapeutic; lumbar or caudal epidural, continuous.
†62288	1	1	Injection of substance other than anesthetic, contrast, or neurolytic solutions; subarachnoid (separate procedure).
62289	1	1	Injection of substance other than anesthetic, contrast, or neurolytic solutions; lumbar or caudal epidural.
			Extracranial nerves, peripheral nerves, and autonomic nervous system
Introduction/injection of anesthetic agent (nerve block), diagnostic or therapeutic			
			Somatic Nerves
†64408	1	1	Injection, anesthetic agent; vagus nerve.
†64410	1	1	Injection, anesthetic agent; phrenic nerve.
†64415	1	1	Injection, anesthetic agent; brachial plexus.
64417	1	1	Injection, anesthetic agent; axillary nerve.
64420	1	1	Injection, anesthetic agent; intercostal nerve, single.
64421	1	1	Injection, anesthetic agent; intercostal nerves, multiple, regional block.
†64430	1	1	Injection, anesthetic agent; pudendal nerve.
64442	1	1	Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, single level.
†64443	1	1	Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, each additional level.

	Payment groups		
	Old	New	
			Sympathetic Nerves
64510	2	1	Injection, anesthetic agent; stellate ganglion (cervical sympathetic).
64520	2	1	Injection, anesthetic agent; lumbar or thoracic (paravertebral sympathetic).
†64530	2	1	Injection, anesthetic agent; celiac plexus, with or without radiologic monitoring.
Destruction by neurolytic agent (e.g., chemical, thermal, electrical, radiofrequency)			
			Somatic Nerves
†64600	2	1	Destruction by neurolytic agent, trigeminal nerve; supraorbital, infraorbital, mental, or inferior alveolar branch.
†64605	2	1	Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale.
†64610	2	1	Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale under radiologic monitoring.
†64622	2	1	Destruction by neurolytic agent; paravertebral facet joint nerve, lumbar, single level.
†64630	2	2	Destruction by neurolytic agent; pudendal nerve.
Neuroplasty (exploration, neurolysis or nerve decompression)			
†*64702	3	1	Neuroplasty, digital, one or both, same digit.
†*64704	3	1	Neuroplasty; nerve of hand or foot.
†*64708	3	2	Neuroplasty, major peripheral nerve, arm or leg; other than specified.
†64712	3	2	Neuroplasty, major peripheral nerve, arm or leg; sciatic nerve.
†64713	3	2	Neuroplasty, major peripheral nerve, arm or leg; brachial plexus.
†64714	3	2	Neuroplasty, major peripheral nerve, arm or leg; lumbar plexus.
†*64716	4	3	Neuroplasty and/or transposition; cranial nerve (specify).
†*64718	4	2	Neuroplasty and/or transposition; ulnar nerve at elbow.
†*64719	4	2	Neuroplasty and/or transposition; ulnar nerve at wrist.
†*64721	3	2	Neuroplasty and/or transposition; median nerve at carpal tunnel.
†64722	3	1	Decompression; unspecified nerve(s) (specify).
†64726	3	1	Decompression; plantar digital nerve.
64727	4	1	Internal neurolysis requiring use of operating microscope (list separately in addition to code for primary neuroplasty) (neuroplasty includes external neurolysis).
Transection or avulsion of nerve			
†64732	3	2	Transection or avulsion of; supraorbital nerve.
†64734	3	2	Transection or avulsion of; infraorbital nerve.
†64736	3	2	Transection or avulsion of; mental nerve.
†64738	3	2	Transection or avulsion of; inferior alveolar nerve by osteotomy.
†64740	3	2	Transection or avulsion of; lingual nerve.
†64742	3	2	Transection or avulsion of; facial nerve, differential or complete.
64744	3	2	Transection or avulsion of; greater occipital nerve.
†64772	3	2	Transection or avulsion of other spinal nerve, extradural.
Excision—somatic nerves			
†64774	3	3	Excision of neuroma; cutaneous nerve, surgically identifiable.
64776	3	3	Excision of neuroma; digital nerve, one or both, same digit.
64778	3	2	Excision of neuroma; digital nerve, each additional digit (list separately by this number).
*64782	3	3	Excision of neuroma; hand or foot, except digital nerve.
64784	3	3	Excision of neuroma; major peripheral nerve, except sciatic.
†64786	3	3	Excision of neuroma; sciatic nerve.
†64787	3	2	Implantation of nerve end into bone or muscle (list separately in addition to neuroma excision).
†64788	3	3	Excision of neurofibroma or neurolemmoma; cutaneous nerve.
64790	3	3	Excision of neurofibroma or neurolemmoma; major peripheral nerve.
64795	3	2	Biopsy of nerve.
Excision—sympathetic nerves			
†64802	4	2	Sympathectomy, cervical; unilateral.
†64803	4	3	Sympathectomy, cervical; bilateral.
Nerve repair by suture (neurorrhaphy)			
64830	4	5	Microdissection and/or microrepair of nerve (list separately in addition to code for nerve repair).
64831	4	4	Suture of digital nerve, hand or foot; one nerve.
†64832	4	1	Suture of digital nerve, hand or foot; each additional digital nerve.
†64834	4	2	Suture of one nerve, hand or foot; common sensory nerve.
†64835	4	3	Suture of one nerve, hand or foot; median motor thenar.
†64836	4	3	Suture of one nerve, hand or foot; ulnar motor.
†64837	4	1	Suture of each additional nerve, hand or foot.
†64840	4	2	Suture of posterior tibial nerve.
64856	4	2	Suture of major peripheral nerve, arm or leg, except sciatic; including transposition.
†64857	4	2	Suture of major peripheral nerve, arm or leg, except sciatic; without transposition.
†64872	4	2	Suture of nerve; requiring secondary or delayed suture (list separately in addition to code for primary neurorrhaphy).
†64874	4	3	Suture of nerve; requiring extensive mobilization, or transposition of nerve (list separately in addition to code for nerve suture).
†64876	4	3	Suture of nerve; requiring shortening of bone of extremity (list separately in addition to code for nerve suture).
Neurorrhaphy with nerve graft			
†64890	4	2	Nerve graft (includes obtaining graft), single strand, hand or foot; up to 4 cm length.
†64891	4	2	Nerve graft (includes obtaining graft), single strand, hand or foot; more than 4 cm length.
†64892	4	2	Nerve graft (includes obtaining graft), single strand, arm or leg; up to 4 cm length.
†64893	4	2	Nerve graft (includes obtaining graft), single strand, arm or leg; more than 4 cm length.
†64895	4	3	Nerve graft* (includes obtaining graft), multiple strands (cable), hand or foot; up to 4 cm length.
†64896	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; more than 4 cm length.
†64897	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; up to 4 cm length.

	Payment groups		
	Old	New	
†64898	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; more than 4 cm length.
†64901	4	2	Nerve graft, each additional nerve; single strand.
†64902	4	2	Nerve graft, each additional nerve; multiple strands (cable).
†64905	4	2	Nerve pedicle transfer; first stage.
†64907	4	1	Nerve pedicle transfer; second stage.
			Eye/ocular adnexa
			Eyeball
Removal of eye.			
†*65091	4	3	Evisceration of ocular contents; without implant.
†*65093	4	3	Evisceration of ocular contents; with implant.
†*65101	4	3	Enucleation of eye; without implant.
†*65103	4	3	Enucleation of eye; with implant, muscles not attached to implant.
*65105	4	4	Enucleation of eye; with implant, muscles attached to implant.
†65110	4	5	Exenteration of orbit (does not include skin graft), removal of orbital contents; only.
Secondary implant procedures			
†65130	3	3	Insertion of ocular implant secondary; after evisceration, in scleral shell.
†65135	3	2	Insertion of ocular implant secondary; after enucleation, muscles not attached to implant.
†65140	3	3	Insertion of ocular implant secondary; after enucleation, muscles attached to implant.
†65150	3	2	Reinsertion of ocular implant; with or without conjunctival graft.
†65155	3	3	Reinsertion of ocular implant; with use of foreign material for reinforcement and/or attachment of muscles to implant.
65175	3	1	Removal of ocular implant.
Removal of ocular foreign body			
*65230	1	1	Removal of foreign body, intraocular; from anterior chamber, magnetic extraction.
*65235	1	2	Removal of foreign body, intraocular; from anterior chamber, nonmagnetic extraction.
†65245	4	3	Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction.
†65260	4	3	Removal of foreign body, intraocular; from posterior segment, magnetic extraction, anterior or posterior route.
†65265	4	4	Removal of foreign body, intraocular; from posterior segment, nonmagnetic extraction.
Repair of laceration of eyeball			
†65272	2	2	Repair of laceration; conjunctiva, by mobilization and rearrangement, without hospitalization.
†65280	4	4	Repair of laceration; cornea and/or sclera, perforating, not involving uveal tissue.
65285	4	4	Repair of laceration; cornea and/or sclera, perforating, with reposition or resection of uveal tissue.
†65290	3	3	Repair of wound, extraocular muscle, tendon and/or Tenon's capsule.
			Anterior Segment—Cornea
Excision			
65400	1	1	Excision of lesion, cornea (keratectomy, lamellar, partial), except pterygium.
65410	1	2	Biopsy of cornea.
*65420	1	2	Excision or transposition of pterygium; without graft.
65426	1	5	Excision or transposition of pterygium; with graft.
Keratoplasty			
†65710	4	7	Keratoplasty (corneal transplant), lamellar, includes autografts and fresh or preserved homografts.
65730	4	7	Keratoplasty (corneal transplant), penetrating (except in aphakia); includes autografts and fresh or preserved homografts.
65750	4	7	Keratoplasty (corneal transplant), penetrating (in aphakia), includes autografts and fresh or preserved homografts.
			Anterior Segment—Anterior Chamber
Incision			
†65800	1	1	Paracentesis of anterior chamber of eye (separate procedure); with diagnostic aspiration of aqueous.
†65805	1	1	Paracentesis of anterior chamber of eye (separate procedure); with therapeutic release of aqueous.
†65810	4	3	Paracentesis of anterior chamber of eye (separate procedure); with removal of vitreous and/or discission of anterior hyaloid membrane, with or without air injection.
†65815	1	2	Paracentesis of anterior chamber of eye (separate procedure); with removal of blood, with or without irrigation and/or air injection.
Other procedures			
†65865	1	1	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); goniosynechiae.
65870	1	4	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); anterior synechiae, except goniosynechiae.
†65875	1	4	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); posterior synechiae.
†65880	1	4	Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); corneovitreal adhesions.
†65900	4	5	Removal of epithelial downgrowth, anterior chamber eye.
65920	4	7	Removal of implanted material, anterior segment eye.
65930	4	5	Removal of blood clot, anterior segment eye.
66020	1	1	Injection, anterior chamber (separate procedure); air or liquid.
†66030	1	1	Injection, anterior chamber (separate procedure); medication.
			Anterior Segment—Anterior Sclera
Excision			
66130	4	7	Excision of lesion, sclera.
†66150	4	4	Fistulization of sclera for glaucoma; trephination with iridectomy.
†66155	4	4	Fistulization of sclera for glaucoma; thermocauterization with iridectomy.
†66160	4	2	Fistulization of sclera for glaucoma; sclerectomy with punch or scissors, with iridectomy.
†66165	4	4	Fistulization of sclera for glaucoma; iridencleisis or iridotasis.
†66170	4	4	Fistulization of sclera for glaucoma; trabeculectomy ab externo.

	Payment groups		
	Old	New	
Repair			
†66220	4	2	Repair of scleral staphyloma; without graft.
†66225	4	4	Repair of scleral staphyloma; with graft.
Revision Operation Wound			
†66250	4	2	Revision or repair of operative wound of anterior segment, any type, early or late, major or minor procedure.
			Anterior Segment—Iris, Ciliary Body
Iridotomy, Iridectomy			
†66500	1	1	Iridotomy by stab incision (separate procedure); except transfixion. Iridotomy by stab incision (separate procedure); with transfixion as for iris bombe.
†*66600	3	3	Iridectomy, with corneoscleral or corneal section; for removal of lesion.
†66605	3	3	Iridectomy with corneoscleral or corneal section; with cyclectomy.
†*66625	3	3	Iridectomy, with corneoscleral or corneal section; peripheral for glaucoma (separate procedure).
†*66630	3	3	Iridectomy, with corneoscleral or corneal section; sector for glaucoma (separate procedure).
†*66635	3	3	Iridectomy, with corneoscleral or corneal section; "optical" (separate procedure).
Repair 66680	4	3	Repair of iris, ciliary body (as for iridodialysis).
66682	4	2	Suture of iris, ciliary body (separate procedure) with retrieval of suture through small incision (e.g., McCannel suture).
Destruction			
†66700	1	2	Cyclodiathermy; initial.
†66701	1	1	Cyclodiathermy; subsequent.
66720	1	2	Cyclocryotherapy; initial.
†66721	3	2	Cyclocryotherapy; subsequent.
†66741	3	2	Cyclodialysis; subsequent.
66762	3	1	Coreoplasty by photocoagulation (one or more sessions) (e.g., for improvement of vision).
			Anterior segment—lens
Incision			
*66800	1	1	Discission of lens capsule; incisional technique (needling of lens); initial.
*66801	1	1	Discission of lens capsule; incisional technique (needling of lens); subsequent.
66821	1	2	Discission of secondary membraneous cataract ("after cataract") and/or anterior hyaloid; laser surgery (e.g., YAG laser) (one or more stages).
Removal cataract			
*66830	4	4	Removal of secondary membraneous cataract ("after cataract"), with corneoscleral section, with or without iridectomy (iridocapsulotomy, iridocapsulectomy).
*66840	4	4	Removal of lens material; aspiration technique, one or more stages.
*66850	4	7	Removal of lens material; phacofragmentation technique (mechanical or ultrasonic, e.g., phacoemulsification), with aspiration.
†66915	4	3	Expression of lens, linear, one or more stages.
*66920	4	4	Extraction of lens with or without iridectomy; intracapsular, with or without enzymes.
*66930	4	5	Extraction of lens with or without iridectomy; intracapsular, for dislocated lens.
*66940	4	5	Extraction of lens with or without iridectomy; extracapsular (other than 66840, 66850, 66915).
*66983	5	8	Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure).
66984	5	8	Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or phacoemulsification technique.
*66985	4	6	Insertion of intraocular lens subsequent to cataract removal (separate procedure).
Posterior segment—vitreous			
†67005	4	4	Removal of vitreous, anterior approach (open sky technique or limbal incision); partial removal.
†67010	4	4	Removal of vitreous, anterior approach (open sky technique or limbal incision); subtotal removal with mechanical vitrectomy (such as VISC or Rotoextractor).
67015	2	1	Aspiration or release of vitreous, subretinal or choroidal fluid, pars plana approach (posterior sclerotomy).
†67025	2	1	Injection of vitreous substitute, pars plana approach (separate procedure) excludes air or balanced salt solutions.
67030	2	1	Discission of vitreous strands (without removal), pars plana approach.
†67036	4	4	Virectomy, mechanical, pars plana approach.
			Posterior segment—retinal detachment
Repair			
†67101	4	4	Repair of retinal detachment, one or more sessions, same hospitalization, cryotherapy or diathermy, with or without drainage or subretinal fluid.
†67107	4	5	Repair of retinal detachment (one or more stages, same hospitalization); scleral buckling (such as lamella excision, imbrication or encircling procedure), with or without implant, may include procedures 67101-67105.
†67108	4	5	Repair of retinal detachment (one or more stages, same hospitalization); with vitrectomy, any method, with or without air tamponade, may include procedures 67101-67107 and/or removal of lens by same technique.
†67109	4	5	Repair of retinal detachment (one or more stages, same hospitalization); by technique other than 67101-67108.
67120	4	2	Removal of implanted material, posterior segment; extraocular.
			Posterior segment—other procedures
Destruction—retina, choroid			
†67208	1	1	Destruction of localized lesion of retina (e.g., maculopathy, choroidopathy, small tumors), one or more sessions; cryotherapy, diathermy.
†67218	1	5	Destruction of localized lesion, retina or choroid (e.g., choroidopathy), one or more stages; radiation by implantation of source (includes removal of source).
†67227	1	1	Destruction of extensive or progressive retinopathy (eg, diabetic retinopathy), one or more sessions; cryotherapy, diathermy.
Scleral repair			
†67250	4	3	Scleral reinforcement (separate procedure); without graft.
†67255	4	3	Scleral reinforcement (separate procedure); with graft.

	Payment groups		
	Old	New	
Ocular adnexa—extraocular muscles			
*67311	4	3	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); one muscle.
*67312	4	4	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); two muscles, one or both eyes.
*67313	4	5	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); three or more muscles, one or both eyes.
†67320	3	4	Transposition of extraocular muscle (e.g., for paretic muscle), one or more stages, one or more muscles, with displacement of plane of action more than 5mm.
†67331	3	4	Strabismus surgery on patient previously operated on; not involving reoperation of muscles.
†67332	3	4	Strabismus surgery on patient previously operated on; involving reoperation of muscles.
Other procedures			
†67350	3	1	Biopsy of extraocular muscle.
			Ocular Adnexa-Orbit
Exploration, excision			
†67400	4	3	Orbitotomy without bone flap (frontal approach); for exploration, with or without biopsy.
†67405	4	4	Orbitotomy without bone flap (frontal approach); with drainage only.
†67412	4	5	Orbitotomy without bone flap (frontal approach); with removal of lesion.
67413	4	5	Orbitotomy without bone flap (frontal approach); with removal of foreign body.
†67415	1	1	Transconjunctival or aspirational biopsy.
Other procedures			
†67550	4	4	Orbital implant (implant outside muscle cone); insertion.
67560	4	2	Orbital implant (implant outside muscle cone); removal or revision.
			Ocular Adnexa-Eyelids
Incision			
†67715	1	1	Canthotomy (separate procedure).
Excision or removal of lesion involving more than skin (i.e., involving lid margin, tarsus, and/or palpebral conjunctiva)			
†*67801	1	2	Excision of chalazion; multiple, same lid.
*67808	1	2	Excision of chalazion; under general anesthesia and/or requiring hospitalization, single or multiple.
†67830	3	2	Correction of trichiasis; incision of lid margin.
†67835	2	2	Correction of trichiasis; incision of lid margin, with free mucous membrane graft.
Tarsorrhaphy			
67880	1	3	Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy.
67882	3	3	Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy; with transposition of tarsal plate.
Repair blepharoptosis, lid retraction			
67901	1	5	Repair of blepharoptosis; frontalis muscle technique with suture.
67902	3	5	Repair of blepharoptosis; frontalis muscle technique with fascial sling (includes obtaining fascia).
67903	3	3	Repair of blepharoptosis; (tarso) levator resection, internal approach.
67904	3	4	Repair of blepharoptosis; (tarso) levator resection, external approach.
†67906	3	5	Repair of blepharoptosis; superior rectus technique with fascial sling (includes obtaining fascia).
†67907	3	3	Repair of blepharoptosis; superior rectus tendon transplant.
67908	1	4	Repair of blepharoptosis; conjunctivo-tarso-levator resection (Fasanella-Servat type).
67909	1	3	Reduction of overcorrection of ptosis.
Repair ectropion, entropion			
†*67914	3	1	Repair of ectropion; suture.
*67916	3	4	Repair of ectropion; blepharoplasty, excision tarsal wedge.
*67917	3	3	Repair of ectropion; blepharoplasty, extensive (e.g., Kuhnt-Szymanowski operation).
†*67921	3	1	Repair of entropion; suture.
*67923	3	4	Repair of entropion; blepharoplasty, excision tarsal wedge.
†*67924	3	4	Repair of entropion; blepharoplasty, extensive (e.g., Wheeler operation).
Reconstructive surgery, blepharoplasty involving more than skin (i.e., involving lid margin, tarsus, and/or palpebral conjunctiva)			
†67935	2	2	Suture of recent wound, eyelid, involving lid margin, tarsus, and/or palpebral conjunctiva) direct closure; full thickness.
*67950	2	2	Canthoplasty (reconstruction of canthus).
67961	3	3	Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, canthus, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; up to one- fourth of lid margin.
†67966	3	3	Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; over one-fourth of lid margin.
67971	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; up to two-thirds of eyelid, one stage or first stage.
†67973	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, lower, one stage or first stage.
†67974	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, upper, one stage or first stage.
†67975	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; second stage.
			Ocular Adnexa-Conjunctiva

	Payment groups		
	Old	New	
Excision, destruction			
68130	1	2	Excision of lesion, conjunctiva; with adjacent sclera.
Conjunctivoplasty			
68320	2	4	Conjunctivoplasty; with conjunctival graft or extensive rearrangement.
†68325	2	4	Conjunctivoplasty; with buccal mucous membrane graft (includes obtaining graft).
†68326	2	4	Conjunctivoplasty, reconstruction cul-de-sac; with conjunctival graft or extensive rearrangement.
†68328	3	4	Conjunctivoplasty, reconstruction cul-de-sac; with buccal mucous membrane graft (includes obtaining graft).
Other procedures			
68360	2	2	Conjunctival flap; bridge or partial (separate procedure).
†68362	2	2	Conjunctival flap; total (such as Gunderson thin flap or purse string flap).
			Ocular adnexa-lacrimal system
Excision			
†68500	3	3	Excision of lacrimal gland (dacryoadenectomy), except for tumor; total.
†68505	3	3	Excision of lacrimal gland (dacryoadenectomy), except for tumor; partial.
68510	3	1	Biopsy of lacrimal gland.
68520	3	3	Excision of lacrimal sac (dacryocystectomy).
†68540	4	3	Excision of lacrimal gland tumor; frontal approach.
†68550	4	3	Excision of lacrimal gland tumor; frontal approach involving osteotomy.
Repair			
†*68700	1	2	Plastic repair of canaliculi.
†68720	3	4	Dacryocystorhinostomy (fistulization of lacrimal sac to nasal cavity).
†68745	3	4	Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); without tube.
†68750	3	4	Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); with insertion of tube or stent.
Probing and related procedures			
*68830	1	2	Proing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent (without general anesthesia).
			Auditory system
			External Ear
Excision			
69105	1	1	Biopsy external auditory canal.
69110	2	1	Excision external ear; partial, simple repair.
†69120	3	2	Excision external ear; complete amputation.
†69140	2	2	Excision exostosis(es), external auditory canal.
69145	2	2	Excision soft tissue lesion, external auditory canal.
†69150	4	3	Radical excision external auditory canal lesion; without neck dissection.
			Middle Ear
Incision			
†*69420	1	1	Myringotomy including aspiration and/or eustachian tube inflation.
69440	3	3	Middle ear exploration through postauricular or ear canal incision.
†69450	3	1	Tympanolysis, transcanal.
Excision			
*69501	4	7	Transmastoid antrotomy ("simple" mastoidectomy).
Repair			
*69620	4	2	Myringoplasty (surgery confined to drumbead and donor area).
*69631	4	5	Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; without ossicular chain reconstruction.
†69632	4	5	Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction, e.g., postfenestration.
69633	4	5	Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction and synthetic prosthesis (e.g., partial ossicular replacement prosthesis, PORP), total ossicular replacement prosthesis (TORP).
69635	4	7	Tympanoplasty with antrotomy or mastoidotomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); without ossicular chain reconstruction.
69636	4	7	Tympanoplasty with antrotomy or mastoidotomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction.
†69637	4	7	Tympanoplasty with antrotomy or mastoidotomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction and synthetic prosthesis (e.g., partial ossicular replacement prosthesis, PORP) total ossicular replacement prosthesis (TORP).
69641	4	7	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); without ossicular chain reconstruction.
†69642	4	7	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with ossicular chain reconstruction.
†69643	4	7	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed wall, without ossicular chain reconstruction.
†69644	4	7	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed canal wall, with ossicular chain reconstruction.
†69645	4	7	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, without ossicular chain reconstruction.
†69646	4	7	Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, with ossicular chain reconstruction.
*69650	4	7	Stapes mobilization.
*69660	4	5	Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material.
†69661	4	5	Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material; with footplate drill out.
†69666	4	4	Repair oval window fistula.
†69667	4	4	Repair round window fistula.
†69670	4	3	Mastoid obliteration (separate procedure).
†69676	4	3	Tympanic neurectomy; unilateral.
†69677	4	4	Tympanic neurectomy; bilateral.

	Payment groups		
	Old	New	
Other procedures			
69700	2	3	Closure postauricular fistula, mastoid (separate procedure).
†69720	4	5	Decompression facial nerve, intratemporal; lateral to geniculate ganglion.
†69725	4	5	Decompression facial nerve, intratemporal; including medial to geniculate ganglion.
†69740	4	5	Suture facial nerve, intratemporal, with or without graft or decompression; lateral to geniculate ganglion.
†69745	4	5	Suture facial nerve, intratemporal, with or without graft or decompression; including medial to geniculate ganglion.
			Radiology Procedures
Gynecological and obstetrical			
*74741	2	2	Hysterosalpingography; complete procedure.

Addendum B.—Wage Index for Urban Areas

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.8833
Taylor, TX	
Aguadilla, PR	.4591
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	.9620
Portage, OH	
Summit, OH	
Albany, GA	.7791
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.8697
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	.9949
Bernalillo, NM	
Alexandria, LA	.8468
Rapides, LA	
Allentown-Bethlehem, PA-NJ	.9873
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9513
Blair, PA	
Amarillo, TX	.9589
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2181
Orange, CA	
Anchorage, AK	1.4320
Anchorage, AK	
Anderson, IN	.9149
Madison, IN	
Anderson, SC	.7799
Anderson, SC	
Ann Arbor, MI	1.1580
Washtenaw, MI	
Anniston, AL	.7673
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9512
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.4370
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.8672
Buncombe, NC	
Athens, GA	.7719
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9293
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	.9849
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.8777
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	.9879
Kane, IL	
Kendall, IL	
Austin, TX	1.0294
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0878
Kern, CA	
Baltimore, MD	.9864
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9043
Penobscot, ME	
Baton Rouge, LA	.9556
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	.9641
Calhoun, MI	
Beaumont-Port Arthur, TX	.9457
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0454
Beaver, PA	
Bellingham, WA	1.0845
Whatcom, WA	
Benton Harbor, MI	.8482
Berrien, MI	
Bergen-Passaic, NJ	1.0484
Bergen, NJ	
Passaic, NJ	
Billings, MT	.9882
Yellowstone, MT	
Biloxi-Gulfport, MS	.8031
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9213
Broome, NY	
Tioga, NY	
Birmingham, AL	.9352
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9270
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9112
Monroe, IN	
Bloomington-Normal, IL	.9656
McLean, IL	
Boise City, ID	1.0168
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0813
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0771
Boulder, CO	
Bradenton, FL	.8932
Manatee, FL	
Brazoria, TX	.8767
Brazoria, TX	
Bremerton, WA	.9573
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1306
Fairfield, CT	
Brownsville-Harlingen, TX	.8698
Cameron, TX	
Bryan-College Station, TX	.9740
Brazos, TX	
Buffalo, NY	.9395
Erie, NY	
Burlington, NC	.7634

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Alamance, NC	
Burlington, VT	.9391
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.3973
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.8903
Carroll, OH	
Stark, OH	
Casper, WY	.9277
Natrona, WY	
Cedar Rapids, IA	.8910
Linn, IA	
Champaign-Urbana-Rantoul, IL	.8904
Champaign, IL	
Charleston, SC	.8542
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	.9647
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8373
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.8845
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.8881
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.8786
Laramie, WY	
Chicago, IL	1.0843
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0550
Butte, CA	
Cincinnati, OH-KY-IN	1.0236
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.7269
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0765
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0256
El Paso, CO	
Columbia, MO	1.0378
Boone, MO	
Columbia, SC	.8444
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7347
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9472
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.8285
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.9122
Allegeny, MD	
Mineral, WV,	
Dallas, TX	1.0143
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.7629
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9446
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	.9918
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.8487
Volusia, FL	
Decatur, AL	.7086
Lawrence, AL	
Morgen, AL	
Decatur, IL	.8903
Macon, IL	
Denver, CO	1.1756
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	.9711
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0784
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.7892
Dale, AL	
Houston, AL	
Dubuque, IA	.9456
Dubuque, IA	
Duluth, MN-WI	.9603
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	8866
Chippewa, WI	
Eau Claire, WI	
El Paso, Tx	8888
El Paso, Tx	
Elkhart-Goshen, IN	.9197
Elkhart, IN	
Elmira, NY	.9134
Chemung, NY	
Enid, OK	.9150
Garfield, OK	
Erie, PA	.9568
Erie, PA	
Eugene-Springfield, OR	1.0199
Lane, OR	
Evansville, IN-KY	1.0302
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0040
Clay, MN	
Cass, ND	
Fayetteville, NC	.8158
Cumberland, NC	
Fayetteville-Springdale, AR	.7383
Washington, AR	
Flint, MI	1.1653
Genesee, MI	
Florence, AL	.7090
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7704
Florence, SC	
Fort Collins-Loveland, CO	1.0292
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0258
Broward, FL	
Fort Myers-Cape Coral, FL	.9003
Lee, FL	
Fort Pierce, FL	1.0480
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.8748
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8182
Okaloosa, FL	
Fort Wayne, IN	.9008
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, Tx	9544
Johnson, Tx	
Parker, Tx	
Tarrant, Tx	
Fresno, CA	1 1137
Fresno, CA	
Gadsden, AL	8523
Etowah, AL	
Gainesville, FL	8728
Alachua, FL	
Bradford, FL	
Galveston-Texas City, Tx	1 0820
Galveston, Tx	
Gary-Hammond, IN	1 0493
Lake, IN	
Porter, IN	
Glens Falls, NY	8736
Warren, NY	
Washington, NY	
Grand Forks, ND	9628
Grand Forks, ND	
Grand Rapids, MI	1 0076
Kent, MI	
Ottawa, MI	
Great Falls, MT	9839
Cascade, MT	
Greeley, CO	1 0215

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Weld, CO	
Green Bay, WI	.9662
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.8558
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9322
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.8716
Washington, MD	
Hamilton-Middletown, OH	.9681
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0515
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.0995
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8213
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1365
Honolulu, HI	
Houma-Thibodaux, LA	.7485
Lafourche, LA	
Terrebonne, LA	
Houston, TX	.9868
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9177
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV,	
Wayne, WV	
Huntsville, AL	.8260
Madison, AL	
Indianapolis, IN	.9903
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0951
Johnson, IA	
Jackson, MI	.9283
Jackson, MI	
Jackson, MS	.8075
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7560
Madison, TN	
Jacksonville, FL	.8920
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7219
Onslow, NC	
Jamestown-Dunkirk, NY	.7963
Chatauqua, NY	
Janesville-Beloit, WI	.8999
Rock, WI	
Jersey City, NJ	1.0737
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8773
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9149
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0421
Grundy, IL	
Will, IL	
Joplin, MO	.8635
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1089
Kalamazoo, MI	
Kankakee, IL	.9024
Kankakee, IL	
Kansas City, KS-MO	1.0093
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0527
Kenosha, WI	
Killeen-Temple, TX	1.1227
Bell, TX	
Coryell, TX	
Knoxville, TN	.8202
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9410
Howard, IN	
Tipton, IN	
LaCrosse, WI	.9686
LaCrosse, WI	
Lafayette, LA	.9003
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.8843
Tippecanoe, IN	
Lake Charles, LA	.8900
Calcasieu, LA	
Lake County, IL	1.0854
Lake, IL	
Lakeland-Winter Haven, FL	.8189
Polk, FL	
Lancaster, PA	.9943
Lancaster, PA	
Lansing-East Lansing, MI	1.0360
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.7360
Webb, TX	
Las Cruces, NM	.8469
Dona Ana, NM	
Las Vegas, NV	1.1147
Clark, NV	
Lawrence, KS	.9910
Douglas, KS	
Lawton, OK	.8523
Comanche, OK	
Lewiston-Auburn, ME	.9192
Androscoggin, ME	
Lexington-Fayette, KY	.9160
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9178
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9429
Lancaster, NE	
Little Rock-North Little Rock, AR	.9240
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8154
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	.9362
Lorain, OH	
Los Angeles-Long Beach, CA	1.2413
Los Angeles, CA	
Louisville, KY-IN	.9547
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	.9714
Lubbock, TX	
Lynchburg, VA	.8498
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.7803
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0072
Dane, WI	
Manchester-Nashua, NH	.9386
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	.8896
Richland, OH	
Mayaguez, PR	.4808
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.7679
Hidalgo, TX	
Medford, OR	.9653
Jackson, OR	
Melbourne-Titusville, FL	.8894

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Brevard, FL	
Memphis, TN-AR-MS	.9412
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0054
Merced, CA	
Miami-Hialeah, FL	1.0225
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	.9929
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0511
Midland, TX	
Milwaukee, WI	1.0132
Milwaukee, WI	
Ozaukee, WI,	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1345
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8234
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0699
Stanislaus, CA	
Monmouth-Ocean, NJ	.9387
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.8150
Ouachita, LA	
Montgomery, AL	.8039
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9652
Delaware, IN	
Muskegon, MI	.9904
Muskegon, MI	
Naples, FL	1.0000
Collier, FL	
Nashville, TN	.8893
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2107
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9479
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0768
New Haven, CT	
New London-Norwich, CT	1.0669
New London, CT	
New Orleans, LA	.9352
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3183
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.0879
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8546
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9267
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4029
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8143
Marion, FL	
Odessa, TX	.9275
Ector, TX	
Oklahoma City, OK	.9862
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0540
Thurston, WA	
Omaha, NE-IA	.9736
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.8900
Orange, NY	
Orlando, FL	.9124
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8951
Daviess, KY	
Oxnard-Ventura, CA	1.3901
Ventura, CA	
Panama City, FL	.7900
Bay, FL	
Parkersburg-Marietta, WV-OH	.9065
Washington, OH	
Wood, WV	
Pascagoula, MS	.8749
Jackson, MS	
Pensacola, FL	.8251
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	9[illegible]94
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	[illegible]0774
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0016
Maricopa, AZ	
Pine Bluff, AR	.7991
Jefferson, AR	
Pittsburgh, PA	1.0107
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0241
Berkshire, MA	
Ponce, PR	.5473
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9618
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1215
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9399
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	.9728
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	.9735
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.9275
Utah, UT	
Pueblo, CO	.9295
Pueblo, CO	
Racine, WI	.9183
Racine, WI	
Raleigh-Durham, NC	.9395
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.8526
Pennington, SD	
Reading, PA	.9118
Berks, PA	
Redding, CA	.9901
Shasta, CA	
Reno, NV	1.1257
Washoe, NV	
Richland-Kennewick, WA	.9720
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.8864

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1291
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8224
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0539
Olmsted, MN	
Rochester, NY	.9490
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	.9806
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2072
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0769
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9890
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.8691
Buchanan, MO	
St. Louis, MO–IL	1.0126
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0503
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2582
Monterey, CA	
Salt Lake City-Ogden, UT	.9271
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8395
Tom Green, TX	
San Antonio, TX	.8334
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2359
San Diego, CA	

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
San Francisco, CA	1.4350
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4702
Santa Clara, CA	
San Juan, PR	.5363
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1722
Santa Barbara, CA	
Santa Cruz, CA	1.2325
Santa Cruz, CA	
Santa Fe, NM	.9488
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.4191
Sonoma, CA	
Sarasota, FL	.9255
Sarasota, FL	
Savannah, GA	.8415
Chatham, GA	
Effingham, GA	
Scranton-Wilkes-Barre, PA	.9240
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0901
King, WA	
Snohomish, WA	
Sharon, PA	.9209
Mercer, PA	
Sheboygan, WI	.9329
Sheboygan, WI	
Sherman-Denison, TX	.8911
Grayson, TX	
Shreveport, LA	.8936
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	.9026
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9492
Minnehaha, SD	
South Bend-Mishawaka, IN	.9712
St. Joseph, IN	
Spokane, WA	1.0764
Spokane, WA	
Springfield, IL	1.0040
Menard, IL	

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Sangamon, IL	
Springfield, MO	.8866
Christian, MO	
Greene, MO	
Springfield, MA	1.0040
Hampden, MA	
Hampshire, MA	
State College, PA	1.0463
Centre, PA	
Steubenville-Weirton, OH–WV	.9122
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1373
San Joaquin, CA	
Syracuse, NY	.9760
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0247
Pierce, WA	
Tallahassee, FL	.8115
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.8996
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8218
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8028
Miller, AR	
Bowie, TX	
Toledo, OH	1.0659
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.9901
Shawnee, KS	
Trenton, NJ	1.0310
Mercer, NJ	
Tucson, AZ	.9777
Pima, AZ	
Tulsa, OK	.9238
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	.9423
Tuscaloosa, AL	
Tyler, TX	.9239
Smith, TX	
Utica-Rome, NY	.8101
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2273
Napa, CA	
Solano, CA	
Vancouver, WA	1.0570
Clark, WA	
Victoria, TX	.8249
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9808
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.2797
Tulare, CA	
Waco, TX	.8588
McLennan, TX	
Washington, DC-MD-VA	1.0827

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9456
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9618
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9472
Palm Beach, FL	
Wheeling, WV-OH	.8554
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0226
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8316
Wichita, TX	
Williamsport, PA	.9086
Lycoming, PA	
Wilmington, DE-NJ-MD)	1.0279
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.8179
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9417
Worcester, MA	
Yakima, WA	.9915
Yakima, WA	
York, PA	.9403
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0016
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0090
Sutter, CA	
Yuba, CA	

WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.6963
Alaska	1.3734
Arizona	.8782
Arkansas	.7071
California	1.0137
Colorado	.8554
Connecticut	1.0175
Delaware	.8332
Florida	.8147
Georgia	.7446
Hawaii	.8840
Idaho	.8568
Illinois	.7994

WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Indiana	.8033
Iowa	.7933
Kansas	.7908
Kentucky	.7938
Louisiana	.7584
Maine	.8233
Maryland	.7966
Massachusetts	1.0135
Michigan	.9110
Minnesota	.8929
Mississippi	.7176
Missouri	.7461
Montana	.8499
Nebraska	.7680
Nevada	.9473
New Hampshire	.8672
New Jersey [1]	
New Mexico	.8049
New York	.8069
North Carolina	.7639
North Dakota	.8395
Ohio	.8650
Oklahoma	.7908
Oregon	.9908
Pennsylvania	.8760
Puerto Rico	.5371
Rhode Island [1]	
South Carolina	.7192
South Dakota	.7557
Tennessee	.7043
Texas	.7609
Utah	.8613
Vermont	.8400
Virginia	.7868
Washington	.9916
West Virginia	.8499
Wisconsin	.8454
Wyoming	.9025

[1] All counties within the State are classified urban.

WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN

County	Urban area	Wage index
Limestone, AL	Huntsville, AL	0.7455
Marshall, AL	Huntsville, AL	0.7207
Charlotte, FL	Sarasota, FL	0.8311
Indian River, FL	Fort Pierce, FL	0.8613
Christian, IL	Springfield, IL	0.7895
Macoupin, IL	St. Louis, MO–IL	0.7592
Mason, IL	Peoria, IL	0.7364
Clinton, IN	Lafayette, IN	0.8095
Henry, IN	Anderson, IN	0.8411
Oven, IN	Bloomington, IN	0.9656
Jefferson, KS	Topeka, KS	0.6041
Allegan, MI	Grand Rapids, MI	1.0075
Barry, MI	Battle Creek, MI	0.8337
Cass, MI	Benton Harbor, MI	0.7956
Ionia, MI	Lansing-East Lansing, MI.	0.8386
Lenawee, MI	Ann Arbor, MI	1.0242
Shiawassee, MI	Flint, MI	1.0236
Tuscola, MI	Saginaw-Bay City-Midland, MI.	0.9020
Van Buren, MI	Kalamazoo, MI	0.9610
Clinton, MO	Kansas City, KS–MO.	0.6306
Cass, NE	Omaha, NE	0.9736
Caswell, NC	Danville, VA	0.7629
Currituck, NC	Norfolk-Virginia Beach-Newport News, VA.	0.9267

WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—Continued

County	Urban area	Wage index
Harnett, NC	Fayetteville, NC	0.7497
Genesee, NY	Rochester, NY	0.7175
Columbiana, OH	Beaver County, PA	0.9089
Morrow, OH	Mansfield, OH	0.6742
Preble, OH	Dayton-Springfield, OH.	0.9918
Van Wert, OH	Lima, OH	0.8375
Lawrence, PA	Beaver County, PA	0.8469
Cherokee, SC	Greenville-Spartanburg, SC.	0.7244
Bedford, VA	Roanoke, VA	0.7261
Fredericksburg City, VA.	Washington, DC–MD–VA.	0.8232
Isle of Wight, VA	Norfolk-Virginia Beach-Newport News, VA.	0.9267
Spotsylvania, VA	Washington, DC–MD–VA.	1.0827
Jefferson, WI	Milwaukee, WI	0.8740
Walworth, WI	Milwaukee, WI	0.9475
Jefferson, WV	Washington, DC–MD–VA.	0.6886
Lincoln, WV	Charleston, WV	0.9647

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BILLING CODE 4120–01–M

[BPD–634–NC]

RIN 0938–AE29

Medicare Program; Update of Ambulatory Surgical Center Payment Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice implements section 1833(i)(2)(A) of the Social Security Act, which requires that the payment rates for ambulatory surgical center services be reviewed and updated annually.

DATES: *Effective Date:* The rates contained in this notice are effective for services furnished on or after March 12, 1990.

Comment Date: To ensure consideration, comments must be received at the appropriate address, as provided below, no later than 5:00 p.m. on April 9, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–654–NC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–634–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 pm. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (301) 966–4571.

SUPPLEMENTARY INFORMATION:

I. Background

Published elsewhere in this issue of the **Federal Register** is a final notice that sets forth a revised methodology for determining the payment rates for Ambulatory Surgical Center (ASC) services furnished to Medicare beneficiaries. That final notice discusses the ASC payment methodology in detail and also sets forth revised ASC payment rates. These rates replace those that have been in effect since July 1, 1987. (See the final notice published June 1, 1987 (52 FR 20466).)

In accordance with the provisions of section 1833(i)(2)(A) of the Social Security Act (the Act), which require annual updates of ASC payment rates beginning on July 1, 1987, this notice updates the ASC payment rates set forth in the final notice published elsewhere in this issue of the **Federal Register** for services furnished on or after March 12, 1990.

II. Provisions of This Notice

We are updating the ASC facility payment rates set forth in the final notice on ASCs published elsewhere in this issue of the **Federal Register**. The revised ASC payment rates set forth below are based on the same ratesetting methodology discussed in the final notice and incorporate the estimated annual rate of increase in the consumer price index for urban consumers (CPI–U) for 1990. The CPI–U is a generalized index reflecting increases in the prices paid for a representative market basket of goods and services. This is the same index we used to update the ASC rates in 1989. The estimated annual percentage of change for calendar year 1990 is 4.88 percent and reflects changes in the CPI–U for 1990 based on Data Resources, Incorporated forecasts.

After calculating the labor-deflated amounts for each of the eight ASC payment groups using the revised HCFA wage index, we separately multiplied each result by an inflation factor of 4.88 percent. For Groups 6 and 8, which also include a $200 allowance for IOLs, the inflation adjustment was made prior to blending the IOL allowance into the facility rate. As discussed in detail in the ASC final notice published elsewhere in this issue of the **Federal Register**, recent information indicates that ASCs can purchase IOLs for considerably less than the $200 allowance. Since application of a 4.88 percent update adjustment may overcompensate facilities for the costs of IOLs, we have not adjusted the $200 IOL payment portion of the payment rate for Groups 6 and 8.

Thus, the ASC facility services payment rates for services furnished on or after March 12, 1990, are as follows:

Group 1—$260
Group 2—$348
Group 3—$400
Group 4—$492
Group 5—$561
Group 6—$730 (530+200)
Group 7—$779
Group 8—$844 (644+200)

Example 1

The following is an example of how the payment is determined for a procedure in Group 4 ($492) for an ASC located in Detroit, Michigan. The appropriate wage index value is 1.0784. The labor-related portion is 34.45 percent and the nonlabor-related portion is 65.55 percent.

Example

Wage Adjusted Rate

=[($492×.3445)×1.0784]+($492×.6555)
=[$169.49×1.0784]+$322.51
=$182.79+$322.51
=$505.30

The steps set forth in this example are used for calculating payment rates for Groups 1 through 5 and Group 7 (that is, the groups whose payment rate does not include an allowance for IOLs).

Example 2

The following is an example of how payment is determined for the two procedures in Group 8 ($844) performed in an ASC located in Detroit, Michigan. The steps set forth in this example are also used in calculating the payment amount for the one procedure in Group 6.

Since the IOL allowance is not subject to the labor adjustment, the $200 allowance must be subtracted from the composite payment rate ($844) before adjusting for labor variation.

Wage Adjusted Rate

=[($844−$200)×.3455×1.0784]+[($844−$200)×.6555]
=[$644×.3445)×1.0784]+($644×.6555)
=($221.86×1.0784)+$422.14
=$239.25+$422.14
=$661.39

Composite Adjusted Rate

=$661.39+$200
=$861.39

Additional cost data and other applicable data will be collected for use in determining future ASC rate updates that will be announced in the **Federal Register** using notice and comment procedures if at all possible. We would not expect to use the CPI–U as the sole basis for annual updates. Simply applying an inflation adjustment to the rates each year may mask economies of scale achieved by ASCs due to a greater number of procedures performed or specialization in a single procedure or group of procedures. Data will be collected by type of ASC (for example, cataract specialty centers). In the future, we will consider differential rate setting for cataract specialty ASCs, which account for a large share of total ASC payments, if their cost structures are different from multi-procedure ASCs.

III. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 (E.O 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as this that results in effects meeting one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this notice with comment on the general economy are expected to be less than $100 million annually. Also, we do not expect that the effects of this notice will meet the other E.O. 12291 criteria. Therefore, this notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all ASCs and hospitals to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of an MSA.

Because the updated ASC rates will provide an increase in payments to hospitals of only about 1.3 percent, we do not believe the changes in the ASC payment rates being implemented by this notice will significantly affect the operations of small rural hospitals. For this reason, we have determined, and the Secretary certifies that this notice will not have a significant effect on a substantial number of small rural hospitals, and therefore, we have not prepared a small rural hospital impact analysis.

Although we believe an impact analysis on small rural hospitals is not required, this notice could have a significant impact on a substantial number of ASCs, and therefore, we believe that a regulatory flexibility analysis is required. In addition, we are voluntarily providing a brief, general discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

In this notice, we are updating the ASC rates, which were published elsewhere in this issue of the **Federal Register** in a final notice concerning changes in the payment methodology for ASCs. Although these rates incorporate the estimated annual rate of increase in the CPI–U for calendar year 1990 (4.88 percent), there are other factors that affect the actual payment increases that ASCs may receive.

First, we are adopting the wage index that was effective for hospital discharges occurring on or after October 1, 1989. Although there may be significant changes in wage index values in some locales, because the labor portion of the ASC rate is only about one-third of the total payment amount, we believe that this will not have a major impact on ASC payments.

Second, variations in an ASC's Medicare case mix will also affect the size of an ASC's aggregate payment increase. Although the ASC payment rates were uniformly inflated by the CPI–U for calendar year 1990, the IOL payment allowance has not been adjusted and will remain at $200 per lens. The actual increase in total payments for a multispecialty ASC, therefore, will be about 3.7 percent as compared to the 4.88 percent increase in the CPI–U. ASCs that perform a lower than average percentage of procedures involving insertion of an IOL will receive an increase that more closely approximates the increase in the CPI–U while those that perform a higher than average percentage of cataract procedures may expect a somewhat lower increase in their aggregate payments.

A third factor determining the effect of the change in the payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of its revenues an ASC receives from the Medicare program, the greater will be the impact of the changes being implemented by this document. The percentage of revenues derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for nearly 60 percent of all cataract cases performed in ASCs, an ASC that performs a high percentage of cataract procedures will probably receive a higher percentage of its payments from Medicare than would an ASC with a case mix comprised largely of other than cataract cases. In the former instances, the changes being implemented by this notice would likely have a greater influence on the ASC's operations and management decisions than they would in the latter instance.

In general, however, we expect the changes being implemented by this notice to affect ASCs positively by raising the rates upon which payments are based.

2. Impact on Hospitals

As explained in the final notice revising the payment methodology for ASCs, published elsewhere in this issue of the **Federal Register**, hospitals are paid the lowest of their aggregate cost, charges, or a blend of 50 percent of the applicable wage-adjusted ASC rate and 50 percent of the hospital-specific amount (the lower of their cost or charges) for ASC approved procedures performed in an outpatient setting. Since most hospitals will be paid on the basis of the blended payment rate, it appears that the effect of the updated rates will be to raise payment to hospitals an average of 2.2 percent.

It should be noted that, although the blended payment methodology requires payments to be composed of a blend of 50 percent of the wage-adjusted ASC rate and 50 percent the hospital-specific amount, the ASC portion generally accounts for less than half of the total payment. This is especially true for the more expensive cases, including cataract procedures in Groups 6 and 8. Hospital costs for these procedures may be almost twice the ASC rate. Thus, the effect of the ASC rate increase being implemented by this notice is diluted and is approximately equal to the ratio of the ASC payment portion to the total hospital payment amount multiplied by the average increase in the ASC rates of 4.88 percent.

The other factors that may significantly affect payments to ASCs (that is, changes to the wage index and case-mix variations) will have little effect on payment to hospitals. For example, the wage adjustment to the ASC portion of a hospital payment is made only to the labor portion of the ASC amount, which accounts for one-third of the ASC rate. After dividing the ASC amount in half and reducing it by the ratio of the ASC payment portion to the total hospital payment amount, the impact of the change in the wage index on a hospital's payments is very small. Similarly, the differences in the payments attributable to case-mix variations may be masked variations in the ratio of the ASC payment portion to the total payment amount.

Another element that reduces the effect of the ASC rate increase is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments.

C. Conclusion

Overall, ASC and hospitals will benefit from the updated rates being implemented with this notice. We have noted that the increase in payments to ASCs may be affected by the changes in the wage index also being implemented by this notice and by differences in case mix. The amount of the increase to hospitals, however, appears to be less sensitive to changes in the wage index or case mix because the blended payment methodology used to pay most ASC procedures performed in hospital

outpatient settings greatly reduces the effect of variations in the wage index or case mix on the ASC portion of the payment blend.

IV. Other Required Information

A. Paperwork Reduction Act

This notice does not impose information collection requirements. Consequently, it need not be reviewed by Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

B. Waiver of Prior Public Comment Period

As discussed in detail in the ASC final notice published elsewhere in this issue of the **Federal Register**, section 1833(i)(2)(A) of the Act requires that ASC payment rates be updated on an annual basis. To update the rates as required by the law, we would ordinarily publish a proposed notice in the **Federal Register** to afford a period for public comment on the proposed updated rates. However, we believe that the importance of updating the ASC payment rates to incorporate the estimated annual rate of increase in the CPI–U for 1989 outweighs the publication of a proposed notice. Therefore, we find good cause to waive these procedures. However, we are providing a 60-day period for public comment, and we will take into consideration comments that we receive by the date and time specified above in the "**DATES**" section. Because of the large number of items of correspondence we normally receive concerning published notices, we cannot acknowledge or respond to the comments individually. However, if we find it necessary to issue revisions in a subsequent notice, we will respond to the comments in that notice.

Sections 1832(a)(2)(F) and 1833(i) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 13951(i)); 42 CFR 416.120 and 416.130)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplemental Medical Insurance)

Dated: June 8, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: August 7, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–2760 Filed 2–7–90; 8:45 am]

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federal register

Thursday
February 8, 1990

Part III

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Rice; Proposed Rule

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]
ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to amend the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice to establish two subclasses for short grain rice; i.e., short grain rice and short grain sweet rice. Short grain sweet rice is a waxy or glutinous type of rice that is characterized by its chalky appearance. Nonglutinous rice (common rice), however, is normally translucent and does not have a chalky appearance. Chalky (nontranslucent) kernels are considered undesirable in nonglutinous rice, and the U.S. Standards for Rice contain grade limits for them. However, in the current market for short grain sweet rice, the chalky characteristic is acceptable. To facilitate the marketing of sweet rice, FGIS is proposing that a separate subclass for short grain sweet rice be established and that the grading factor, chalky kernels, not apply to rice in this subclass.

DATE: Comments must be submitted on or before April 9, 1990.

ADDRESSES: Comments must be submitted in writing to Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628 South Building, P.O. Box 96454; Washington, DC, 20090–6454; telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond as follows: to Paul D. Marsden, TLX: 7607351, ANS/FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be available for inspection at Room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibilty Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Proposed Action

The U.S. Standards for Rough Rice (7 CFR § 68.201 *et seq.*), Brown Rice for Processing (7 CFR § 68.251 *et seq.*), and Milled Rice (7 CFR § 68.301 *et seq.*), were specifically designed to facilitate the marketing of nonglutinous rice (common rice). The standards do not accommodate sweet rice (waxy or glutinous rice), which has only recently been grown and marketed in the United States. As a result, FGIS has been petitioned by organizations that market short grain sweet rice to revise the standards to make them more applicable to sweet rice.

Sweet rice and nonglutinous rice are very similar in size and shape, but they have notable endosperm differences. Sweet rice is characterized by an opaque endosperm containing virtually all amylopectin-type starch. Therefore, sweet rice kernels appear chalky. A chalky appearance in sweet rice is considered indicative of properties that make this rice useful in the production of particular specialty products and therefore enhances its appeal for such uses.

Nonglutinous rice, on the other hand, is normally translucent. A chalky appearance in nonglutinous rice is considered undesirable. Consequently, the U.S. Standards for Rice provide specific maximum limits for the amount of chalky kernels allowed in all types and classes of rice. For example, U.S. No. 2 Short Grain Milled Rice may not contain more than 4.0 percent chalky kernels.

As a result, sweet rice normally is graded U.S. Sample grade (the lowest grade in the standards) because of excess chalky kernels. This, according to members of the sweet rice industry, is inhibiting the marketing of this rice. FGIS is, therefore, proposing that the U.S. Standards for Rough Rice, Brown Rice for Processing, and Milled Rice be amended to establish two subclasses for short grain rice; i.e., short grain rice and short grain sweet rice. Short grain sweet rice, would be Short grain rice that contains 99.0 percent or more chalky kernels. FGIS is further proposing that the grading factor "chalky kernels" not apply to rice in the subclass short grain sweet rice.

List of Subjects in 7 CFR Part 68

Administrative practice and procedures, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR part 68 is proposed to be amended as follows:

PART 68–REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.202(c)(3) is revised to read as follows:

§ 68.202 Definition of other terms.

* * * * *

(c) * * *

(3) *Short grain rough rice* shall consist of rough rice which contains more than 25 percent of whole kernels and which, after milling to a well-milled degree, contains not more than 10 percent of whole or large broken kernels of long grain rice or whole kernels of medium grain rice. This class is divided into the following two subclasses:

(i) *Short grain rough rice.* Short grain rough rice that contains more than 1 percent nonchalky kernels.

(ii) *Short grain sweet rough rice.* Short grain rough rice that contains 99 percent or more chalky kernels.

3. Section 68.210 is revised to read as follows:

§ 68.210 Grades and grade requirements for the classes of rough rice. (See also § 68.212.)

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Service (7 U.S.C. 75a; 7 CFR 68.5)).

Grade	Maximum limits of—							Color requirements [1] (minimum)
	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined)	Chalky kernels		Other types [3]	
	Total (singly or combined)	Heat-damaged kernels and objectionable seeds (singly or combined)	Heat-damaged kernels		In long grain rice	In medium or short grain rice [2]		
	Number in 500 grams	Number in 500 grams	Number in 500 grams	Percent	Percent	Percent	Percent	
U.S. No. 1	4	3	1	0.5	1.0	2.0	1.0	Shall be white or creamy.
U.S. No. 2	7	5	2	1.5	2.0	4.0	2.0	May be slightly gray.
U.S. No. 3	10	8	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	27	22	15	4.0	6.0	8.0	5.0	May be gray or slightly rosy.
U.S. No. 5	37	32	25	6.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	75	[4] 15.0	15.0	15.0	10.0	May be dark gray or rosy.
U.S. Sample grade	U.S. Sample grade shall be rough rice which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No.6, inclusive; (b) contains more than 14.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; or (e) is otherwise of distinctly low quality.							

[1] For the special grade Parboiled rough rice, see § 68.212(b).
[2] These limits do not apply to the subclass short grain sweet rough rice.
[3] These limits do not apply to the class Mixed Rough Rice.
[4] Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

4. Section 68.252(d)(3) is revised to read as follows:

§ 68.252 Definition of other terms.

* * * * *

(d) * * *

(3) *Short grain brown rice for processing* shall consist of brown rice for processing which contains more than 25.0 percent of whole kernels of brown rice and not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of medium grain rice. This class is divided into the following two subclasses:

(i) *Short grain brown rice for processing.* Short grain brown rice for processing that contains more than 1.0 percent nonchalky kernels.

(ii) *Short grain sweet brown rice for processing.* Short grain brown rice for processing that contains 99.0 percent or more chalky kernels.

5. Section 68.261 is revised to read as follows:

§ 68.261 Grade and grade requirements for the classes of brown rice for processing. (See also § 68.263.)

Grade	Maximum limits of—									
	Paddy kernels		Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined)	Chalky kernels [1] [2]	Broken kernels removed by a 6 plate or a 6½ sieve [3]	Other types [4]	Well-milled kernels
			Total (singly or combined)	Heat-damaged kernels	Objectionable seeds					
	Percent	Number in 500 grams	Number in 500 grams	Number in 500 grams	Number in 500 grams	Percent	Percent	Percent	Percent	Percent
U.S. No 1		20	10	1	2	1.0	2.0	1.0	1.0	1.0
U.S. No. 2	2.0		40	2	10	2.0	4.0	2.0	2.0	3.0
U.S. No. 3	2.0		70	4	20	4.0	6.0	3.0	5.0	10.0
U.S. No. 4	2.0		100	8	35	8.0	8.0	4.0	10.0	10.0
U.S. No. 5	2.0		150	15	50	15.0	15.0	6.0	10.0	10.0
U.S. Sample grade	U.S. Sample grade shall be brown rice for processing which (a) does not meet the requirements for any of the grade from U.S. No. 1 to U.S. No. 5, inclusive: (b) contains more than 14.5 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.2 percent of related material or more than 0.1 percent of unrelated material; (f) contains two or more live weevils or other live insects; or (g) is otherwise of distinctly low quality.									

[1] For the special grade Parboiled brown rice for processing, see § 68.263(a).
[2] These limits do not apply to short grain sweet brown rice for processing.
[3] Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[4] These limits do not apply to the class Mixed Brown Rice for Processing.

6. Section 68.302(d)(3) is revised to read as follows:

§ 68.302 Definition of other terms.

* * * * *

(d) * * *

(3) *Short grain milled rice* shall consist of milled rice which contains more than 25.0 percent of whole kernels of milled rice and in U.S. No. 1 through U.S. No. 4 not more than 10.0 percent of whole or broken kernels of long grain rice or whole kernels of medium grain rice. U.S. No. 5 and U.S. No. 6 short grain milled rice shall contain not more than 10.0 percent of whole kernels of long or medium grain milled rice (broken kernels do not apply). This class is divided into the following two subclasses:

(i) *Short grain milled rice.* Short grain milled rice that contains more than 1.0 percent nonchalky kernels.

(ii) *Short grain sweet milled rice.* Short grain milled rice that contains 99.0 percent or more chalky kernels.

7. Section 68.310 is revised to read as follows:

§ 68.310 Grades and grade requirements for the classes Long Grain Milled Rice, Medium Grain Milled Rice, Short Grain Milled Rice, and Mixed Milled Rice.

[See also § 68.315.]

Grade	Maximum limits of—											Color requirements [1]	Minimum milling requirements [5]
	Seeds, heat-damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly combined)	Chalky kernels [1]		Broken kernels				Other types [4]			
	Total	Heat-damaged kernels and objectionable seeds		In long grain rice	In medium or short grain rice [2]	Total	Removed by a 5 plate [3]	Removed by a 6 plate [3]	Through a 6 sieve [3]	Whole kernels	Whole and broken kernels		
	Number in 500	Number in 500	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent		
U.S. No. 1	2	1	0.5	1.0	2.0	4.0	0.04	0.1	0.1		1.0	Shall be white or creamy.	Well milled.
U.S. No. 2	4	2	1.5	2.0	4.0	7.0	0.06	0.2	0.2		2.0	May be slightly gray.	Well milled.
U.S. No. 3	7	5	2.5	4.0	6.0	15.0	0.1	0.8	0.5		3.0	May be light gray.	Reasonably well milled.
U.S. No. 4	20	15	4.0	6.0	8.0	25.0	0.4	2.0	0.7		5.0	May be gray or slightly rosy.	Reasonably well milled.
U.S. No. 5	30	25	[6] 6.0	10.0	10.0	35.0	0.7	3.0	1.0	10.0		May be dark gray or rosy.	Lightly milled.
U.S. No. 6	75	75	[6] 15.0	15.0	15.0	50.0	1.0	4.0	2.0	10.0		May be dark gray or rosy.	Lightly milled.
U.S. Sample grade.	U.S. Sample grade shall be milled rice of any of these classes which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive, (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.												

[1] For the special grade Parboiled milled rice, see § 68.315(c).
[2] These limits do not apply to the subclass short grain sweet milled rice.
[3] Plates should be used for southern production rice; and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[4] These limits do not apply to the class Mixed Milled Rice.
[5] For the special grade Undermilled milled rice, see § 68.315(d)
[6] Grade U.S. No. 6 shall contain not more than 6.0 pecent of damaged kernels.

Dated: December 29, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 90-1384 Filed 2-7-90; 8:45 am]

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federal register

Thursday
February 8, 1990

Part IV

Department of the Interior

Bureau of Indian Affairs

Acquired Immunodeficiency Syndrome (AIDS) Policy for Students Enrolled in Bureau of Indian Affairs Funded Schools; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Acquired Immunodeficiency Syndrome (AIDS) Policy for Students Enrolled in Bureau of Indian Affairs Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Policy Statement.

SUMMARY: The Acquired Immunodeficiency Syndrome (AIDS) epidemic is the number one public health problem in the United States. The purpose of this document is to provide notice of general policy guidelines regarding students and staff in Bureau-funded schools and the Office of Indian Education Programs (OIEP) who have AIDS or who are carrying the AIDS associated virus which is the Human Immunodeficiency Virus (HIV).

DATES: Comments on this proposed policy must be submitted on or before May 9, 1990.

ADDRESSES: All comments concerning this proposed policy should be addressed to the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs), Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, Code 521, Mail Stop 3512–MIB, 18th and "C" Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William Mehojah, Department of the Interior, Office of Indian Education Programs, Bureau of Indian Affairs, Code 521, Mail Stop 3512–MIB, 18th and "C" Streets, NW., Washington, DC 20240, telephone number (202) 343–4071.

SUPPLEMENTARY INFORMATION: The Office of Indian Education Programs (OIEP) recognizes its dual obligation to protect the rights of individual students and to provide a safe environment for all students, staff, and the public. Therefore, the OIEP is issuing policy guidelines which will provide schools administrative guidance in addressing this issue.

AUTHORITY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

(A) Guideline—Students

(1) A principal who has reason to believe that a student has AIDS or is carrying the AIDS associated virus shall consult with the student's parents and local public health or state health representatives. A panel will be established by the principal to review the case and will be composed of the school administrator, health care professional (usually Indian Health Services (IHS) or other medical doctor advising management), and child's physician. If it is determined that the child is infected, the panel will decide on a case-by-case basis who needs to be informed and will insure that an appropriate educational placement will follow the guidelines in this policy.

(2) The placement of infected children in school shall be made on a case-by-case basis by a review panel composed of health care professionals, school officials, the child's physician, and school personnel associated with the proposed educational setting. Evaluation to assess the need for a more restricted environment for each case should be performed periodically as deemed necessary by the health care professionals and the child's physician. If a child is removed from the classroom, an appropriate Alternative Education Program should be provided. While each case is to be considered on its own merits the following categories of infected students shall receive special consideration:

—neurologically impaired students;
—students who lack control of bodily functions;
—students who display behaviors such as biting; and
—students who have uncoverable, oozing lesions.

(3) A child's right to privacy shall be maintained. The number of personnel who are aware of the child's condition should be kept at a minimum needed to assure proper care of the child and to detect situations where the potential for transmission may increase. However, all personnel that need to know should be advised.

(4) Bureau-funded schools shall establish appropriate comprehensive health education programs that includes information about AIDS. Sexually Transmitted Disease (STD) education programs should be established in all junior and senior high school grades. These programs may be integrated into the established curriculum. The STD programs should include education about all means of transmission, including intravenous (IV) drug use and the means of prevention. Parents should be consulted and involved in the design and implementation of the schools' education program.

(5) School officials shall notify parents when illnesses that may represent a threat to children are occurring in the school. These may include chicken pox, measles, whooping cough, meningitis, influenza or other serious communicable diseases.

(6) School personnel shall receive training in how AIDS and other infectious diseases are acquired, how transmission can be prevented, and how to handle bodily fluids in schools.

(7) Schools shall conduct programs to inform parents, school board members, and communities regarding AIDS and its transmission. It is expected that this awareness program will be coordinated with the Public Health Service, Social Service Agencies, and state health programs.

(8) Routine AIDS screening of children is not recommended. Screening should not be a requirement for school entry.

(9) Children with suppressed immune systems should not receive live virus vaccines.

(B) Guideline—Employees

(1) Employees who have been diagnosed as having the AIDS virus should be allowed to continue working as long as they are able to maintain acceptable work performance and do not pose a safety or health threat to children or other employees. The school administrator, employee's physician, and health care professionals will determine on a case-by-case basis whether or not the employee should remain in his/her current assignment. Evaluation to assess the need for a more restricted environment for each case should be performed regularly and not less than annually. Schools considering reassignment, detail, other changes to the employee's position should observe established policies governing qualification requirements, internal placement, and other staffing requirements. If performance problems arise, existing Federal and school personnel policies and practices will be followed.

(2) Employee's medical documentation and other information related to their condition will remain confidential in compliance with policy and privacy act regulations. A separate file will be maintained for infected employees and information concerning their condition will not become a part of their official personnel file. Supervisors, managers, and others included in implementing personnel management decisions involving employees with AIDS must strictly observe privacy and confidentiality requirements.

(3) Employees with AIDS or related viruses shall be entitled to the same benefits as other employees temporarily or permanently disabled by illness including sick leave, annual leave, leave without pay, or disability retirement.

(4) All OIEP personnel will be provided training on the medical and

personnel management dimensions of AIDS. These programs will provide guidance on how to recognize and handle situations which arise in their organizations.

(5) AIDS information will be provided to all education employees and will be of an on-going nature.

(6) Screening for AIDS or AIDS associated viruses will not be a requirement for employment.

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs

[FR Doc. 90–2930 Filed 2–7–90; 8:45 am]

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Federal Register

Thursday
February 8, 1990

Part V

Department of the Interior

Bureau of Indian Affairs

Plan for use of Pueblo of Santo Domingo's Indian Judgment Funds; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Docket Nos. 355–B, 355–F, and 355–H]

Plan for Use of Pueblo of Santo Domingo's Indian Judgment Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 4627–MIB, 18th and C Streets, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian Tribe. Funds were appropriated on October 18, 1988, in satisfaction of the award granted to the Pueblo of Santo Domingo before the United States Claims Court in Dockets 355–B, 355–F, and 355–H. The plan for the use and distribution of the funds was submitted to Congress with a letter dated September 12, 1989, and was received (as recorded in the Congressional Record) by the Senate on September 21, 1989, and by the House of Representatives on September 18, 1989. The plan became effective on November 20, 1989, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of Judgment Funds Awarded to the Pueblo of Santo Domingo in Dockets 355–B, 355–F, and 355–H before the United States Claims Court

The funds appropriated October 18, 1988, in satisfaction of the award granted to the Pueblo of Santo Domingo, in Dockets 355–B, 355–F, and 355–H before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used as follows.

The funds shall be transferred to the Pueblo of Santo Domingo to be managed under an investment plan. Such transfer will take place following approval of the investment plan by the Secretary of the Interior. The investment plan will contain or be subject to the requirements of sound investments, responsible accounting, and adequate controls to obtain maximum benefit for the Pueblo of Santo Domingo.

The funds shall be invested by the Pueblo of Santo Domingo until such time as the Tribal Council authorizes their use for any tribal economic development program, including land purchases, or other tribal programs.

All responsibility of the United States for the judgment funds or the investment or use of the judgment funds after their transfer to the Pueblo pursuant to the investment plan shall cease at the time the funds are transferred to the Pueblo of Santo Domingo.

None of the funds shall be distributed as per capita or dividend payments.

Eddie Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 90–2931 Filed 2–7–90; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
February 8, 1990

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219-AA63

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises two sections of the Mine Safety and Health Administration's (MSHA) underground roof support safety standards which were promulgated on January 27, 1988. These two standards, which address the quality of roof bolts and the removal of permanent roof supports, were challenged in the D.C. Circuit. This rulemaking project was initiated pursuant to the opinion of the Court in that case which would have vacated the affected sections on February 15, 1990.

EFFECTIVE DATE: February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration is revising two of its existing safety standards for roof, face and rib support at underground coal mines. These standards were originally promulgated on January 27, 1988 (53 FR 2354) and address roof bolts and roof support removal. These revisions are proposed under 30 U.S.C. 811.

This final rule affects existing 30 CFR 75.204 (a) and (b), which set out requirements for roof bolts, and 30 CFR 75.213, which sets out requirements for roof support removal.

On March 10, 1989, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of *United Mine Workers of America (UMWA)* v. *Elizabeth H. Dole*, 870 F.2d 662. The Court held that MSHA's preamble discussion of two specific standards challenged by the UMWA did not address whether the new standards provided the same or greater level of safety protection as the prior standards. Therefore, the Court held the two standards invalid. On May 17, 1989, the Court of Appeals issued an order which will vacate 30 CFR 75.204 (a) and (b), and 75.213 on February 15, 1990.

In accordance with the May 17, 1989 court order the Agency has undertaken rulemaking to address the issues raised in litigation, and to fully discuss MSHA's statutory mandate contained in 30 U.S.C. 811(a)(9) which requires that new mandatory standards not reduce the protection provided to miners by existing mandatory standards.

On August 31, 1989 (54 FR 36186) MSHA published a notice of proposed rulemaking in the Federal Register which also announced the date for a public hearing. A public hearing was held in Lexington, Kentucky on October 19, 1989. A transcript of the proceedings was made available for public inspection. Following the public hearing, interested persons were allowed to submit supplemental statements and data until the record closed on October 30, 1989. During the rulemaking process, MSHA received comments from all segments of the mining community. The Agency's final rule addresses the comments received and is consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act.

As stated above, the standards revised by this rulemaking were found to be invalid by the U.S. District Court for the District of Columbia Circuit and were ordered vacated by the Court, effective February 15, 1990. As the existing standards could no longer be cited after February 15, 1990 the Agency believes that the revised standards must go into effect on or prior to that date. Therefore, in order to avoid a gap in MSHA's roof support safety standards for underground coal mines and in order to minimize disruption to the mining industry regarding how the Agency will address these areas of safety, the revised standards will go into effect on February 15, 1990. MSHA believes that these reasons establish good cause pursuant to 5 U.S.C. 553(d)(3) to exempt the Agency from the requirement of 5 U.S.C. 553(d) that a substantive rule be published not less than 30 days before its effective date.

Section by Section Discussion

Section 75.204 Roof Bolting

Paragraphs (a) and (b) of this standard address the quality of roof bolts and accessories that are installed in underground coal mines. Paragraphs (c) through (g) are not included in this rulemaking and were not at issue in the litigation.

The final rule has been updated to reflect technological advancements in the development of roof bolts and will provide improved protection to miners when compared to the prior rule (1987). The final rule also updates the standard by referencing the most recent revision of the American Society for Testing Materials (ASTM) standard which was published in 1988.

Paragraph (a) requires the operator to obtain a certification from the manufacturer that roof bolts and accessories addressed in ASTM F432-88, "Standard Specification for Roof and Rock Bolts and Accessories" are manufactured in accordance with the ASTM standard. The certification ensures that roof bolts and accessories are manufactured and tested in accordance with the ASTM standards. The ASTM standard for roof bolts and accessories is a concensus standard used throughout the United States for the design of such materials.

Requiring that the operator obtain a certification from the manufacturer eliminates the concern that mine operators need to have the same knowledge of ASTM standards as manufacturers. The final rule requires operators to have available for inspection a certification from the manufacturer that the roof bolts and accessories used at the mine meet the ASTM specifications. This approach is consistent with the industry practice of manufacturers routinely furnishing such certification to the mine operator when requested to do so in a contract or purchase order.

In addition, ASTM F432-88 specifies that the manufacturer is to provide such a certification upon request. Interested persons may obtain ASTM F432-88 from the publisher, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. It may also be examined at any Coal Mine Safety and Health District or Subdistrict Office.

The prior rule, 30 CFR 75.200-7(a) (1987) stated that roof bolt assemblies should meet American National Standards Institute's (ANSI), "Specifications for Roof Bolting Materials in Coal Mines". This rule, which was published in 1970, referred to the ANSI document in existence at that time. The 1988 ASTM standard, which is referenced in the final rule, is a more comprehensive and updated document that reflects advances in roof bolt technology. Examples of such improvements are: A grade rating system for bearing plates; a color coding scheme used to identify the length of bolts; increased strength specifications for threaded parts; increased coverage of roof bolt accessories i.e., hardened washers, reinforcement bars, and couplings; upgrading of the quality of steel used and specifications for chemical requirements of materials used

in the manufacture of roof bolts and accessories; and standard test methods for manufacturers to assure that bolts and accessories meet performance specifications. As a result, the final rule provides additional safety for miners, as compared to the prior rule.

Some commenters stated that ASTM standards are defective in that they do not address all types of roof bolts and accessories.

These commenters suggested that the ASTM standards should be revised to rectify this problem. Although MSHA does participate in the revision of ASTM standards, the ultimate decision to revise these standards is within the authority of the ASTM consensus standard organization. The Agency makes use of these standards to the fullest extent and bolting systems that are not addressed by the consensus standard are addressed by the Agency on an individual basis. This approach allows for the evaluation and use of bolts and accessories that incorporate technologies that are more effective or at least equally as effective as those addressed by the ASTM standards.

Paragraph (b) of the final rule allows the use of roof bolts and accessories not addressed in ASTM F432–88, provided that they are approved by the District Manager and are effective in controlling the mine roof. The effectiveness of such bolts and accessories is required to be demonstrated by their successful use in an area of a coal mine with similar strata, opening dimensions and roof stresses, or by their effective use under controlled conditions in a representative area of the affected mine. Testing is required to be conducted in an area with conditions that are representative of those where the materials are expected to be used. Until testing demonstrates the effectiveness of the bolts or accessories proposed to be used, access to the area would be controlled to permit entry only by those persons necessary for the testing process.

Some commenters stated that the performance standard for use of bolts and accessories not addressed by the ASTM standard was unacceptable because use of support devices in the area of a mine with similar strata, opening dimensions and roof stresses does not ensure that they will be safe for use in a similar area of another mine. MSHA's experience indicates that where like conditions exist, roof bolts and accessories will perform in a similar manner. MSHA recognizes that conditions will change within the same coal seam or even within the same mining section. But where bolts have proven to be effective in the conditions that exist at a mine, Agency experience indicates that they will be effective when used in like conditions at another mine. However, where conditions change, it may also be necessary to change the roof support system used. This requirement applies to roof support systems addressed by the ASTM standard as well as those not addressed by the ASTM standard. Such changes in the use of mining support systems must be addressed in the roof control plan.

The prior rule, 30 CFR 75.200–12 (1987), called for test areas for new support materials, but did not set out the performance that these materials would be required to meet. The final rule improves the prior rule by specifying how much bolts and accessories are to perform and by further specifying that this performance must be demonstrated before approval is granted.

The phrase "approved by the District Manager" is added to the final rule to clarify that all new roof bolts and accessories not addressed by the ASTM standard must be approved for use through the roof control plan before they are permitted to be used as roof support at a mine. The Agency believes that this clarification will further assure that the individual circumstances at each mine will be fully evaluated to confirm that like conditions exist before approval is granted to use new technology not addressed by the ASTM standards.

Some commenters were opposed to District Manager approval of bolts and accessories not addressed by the ASTM standards. These commenters suggested that such a system would result in use of bolts based on system performance rather than a manufacturing standard and could result in the manufacture of substandard bolts. These commenters pointed out that District Managers do not have the expertise to evaluate the quality assurance that manufacturers apply to their products. However, in all cases where new support systems are involved, the District Managers will rely on past performance, previous underground testing and test data from the manufacturer or MSHA's Office of Technical Support. This process has been successfully used for the last twenty years and has proven effective for introducing new roof bolts and accessories into the mining industry. For example, resin bolting systems and roof trusses have been introduced into mines through this process. Through this approach, new technologies in roof control can be introduced into underground coal mining. This will assure that improved systems that provide greater protection for miners can be used.

The District Manager is regularly involved in approving roof bolting materials. Existing standard 30 CFR 75.221(a)(9) addresses this issue. Among other items this standard requires the operator to list the length, diameter and grade of roof bolts. District Managers have been involved in approving these systems since 1970. In addition, each District Manager has a staff of roof control specialists to assist in verifying the quality of all roof bolting systems used in mines.

Section 75.213 Roof Support Removal

This standard, which is derived from prior rules 30 CFR 75.204, 75.204–1 and 75.200–14, sets forth requirements for removing permanent roof supports. It requires that certain precautions be taken to minimize the hazards involved in the removal of roof supports and identifies circumstances under which roof supports cannot be removed.

Like the proposal, the final standard differs from the prior standard which provided that operators who intend to recover roof supports include a plan for such recovery in the mine's approved roof control plan. Under the final rule, the criteria provisions in 30 CFR 75.200–14 (1987), which were considered by the District Manager when approving roof support recovery plans, will no longer be implemented through roof control plans. Instead, all requirements affecting roof support removal are comprehensively addressed in the final standard. As a result, roof control plans will be less cumbersome and complex.

Several commenters suggested that roof support removal should be approved in roof control plans. These commenters indicated that such approval would allow MSHA to review plans to ensure that the anticipated recovery operations are safe and comply with the regulations. These commenters pointed out that the previous rules required that all criteria be included in roof control plans. They also pointed out that the D.C. Circuit Court rules that these criteria standards were mandatory and therefore had to be adopted unless a safer standard was included in the roof control plan. These commenters maintain that individually tailored measures for roof support removal included in roof control plans is a safer approach than that taken in the proposed rule. The Agency has reviewed these comments and believes that the final rule provides the necessary degree of flexibility to address site-specific conditions while providing a greater degree of safety for miners removing roof supports.

When compared to the prior standards in 30 CFR 75.204 and 75.204–1 (1987), the final rule is more

comprehensive in scope in that it provides additional mandatory standards for addressing safety procedures for removal of roof support materials other than roof bolts. In addition, the final rule addresses all of the previous criteria provisions which were contained in 30 CFR 75.200–14 (1987). With some revisions, which are discussed below, all of these previous criteria, which were used to guide District Managers in approving roof control plans, have been incorporated into the final rule as mandatory standards. This is consistent with MSHA's regulatory policy to address roof support provisions with general application as separate standards rather than through plans which address conditions that may vary significantly from mine to mine (53 FR 2354). The Agency believes that the final rule for roof support removal will provide a greater degree of safety for miners than the previous rule.

Paragraph (a) specifies that the removal of permanent roof supports be supervised by a management person experienced in roof support removal. In addition, the standard requires persons performing roof support removal to have at least one year of underground mining experience. With this experience, miners performing roof support removal would be aware of the general hazards associated with underground mining.

The prior standard, 30 CFR 75.200–14(a) (1987), provided that "Recovery should only be done under the direct supervision of a mine foreman, assistant mine foreman, or section foreman." This standard also provided that experienced miners be assigned to recovery work, but did not specify the amount of experience required. Also, persons with a supervisory title could have supervised roof support removal, even if they had no experience with this type of work. The final standard focuses directly on the support removal experience of the supervisor and clarifies the amount of underground mining experience required by persons who perform roof support removal.

The term "direct" supervision, which appeared in the prior rule is not included in the final rule in order to eliminate any confusion with respect to interpretation of the standard. Over the years this term has, on occasion, been misconstrued to mean that the supervisor must be physically present at all times. Under the prior rule, the Agency did not intend and has not required that the supervisor be physically present at all times. Such an interpretation unnecessarily restricts supervisory personnel from performing other required functions that are important to miner safety. Such functions include examinations for methane and oxygen deficiency and other hazardous conditions which may need to be performed out of the presence of miners engaged in support removal. However, it is the Agency's intention that the supervisor direct all phases of roof support removal operations and be available to address any unusual circumstances that may arise. The Agency believes that this clarification does not change the protection afforded to miners.

Commenters suggested that elimination of the requirement for roof support removal to be supervised by a foreman would reduce safety. These commenters indicated that foremen have managerial authority and are more likely to stop operations if conditions are unsafe. They also pointed out that foremen will be less absorbed in the actual task and are better qualified to detect unsafe conditions. Finally, they suggested that foreman with experience in support removal should supervise removal work.

In response to these commenters the Agency has revised the proposal to require that a management person with experience in roof support removal supervise roof support removal. Since the operator is ultimately responsible for the health and safety of the miners, MSHA believes this approach is more appropriate for the purpose of assuring that roof support removal operations are conducted in accordance with required standards and procedures. This will also assure that management is immediately aware of conditions that may require a change or adjustment to removal operations. MSHA believes that this approach, when compared to the prior standards in 30 CFR 75.200–14 (a) and (b) (1987), improves safety for miners since it will eliminate the possibility that a person without experience in roof support removal could supervise this work and also clarifies that at least one year of underground mining experience is necessary for persons performing roof support removal. Under the prior standard it was possible for a person with less than one year of underground mining experience to engage in roof support removal and MSHA believes that this clarification will enhance miner safety.

Paragraph (b) requires the management person supervising roof support removal to examine roof conditions in the area where permanent supports are to be removed, and specify which supports are to be removed. The final rule requires these tasks to be completed before roof support removal is started. Testing roof conditions in these areas will determine whether it is safe to remove the supports. This requirement is consistent with the prior rule.

Paragraph (c)(1) requires at least one row of temporary supports on not more than 5-foot centers or equivalent support, to be installed prior to the removal of permanent supports. These supports are required to be installed across the opening within four feet of the supports to be removed. If one row of temporary supports is not sufficient to assure safe removal, the standard requires additional supports to be installed across the opening.

The prior rule provided for two rows of temporary supports on not more than 4-foot centers wherever supports were to be removed. The final rule recognizes that supports on centers up to 5 feet can effectively prevent a roof fall from extending beyond where supports are being removed. This is consistent with MSHA's experience over the last twenty years in applying previous criteria through the plan approval process. The overwhelming majority of approved support removal plans have specified placement of posts on 5 foot centers and this has provided necessary protection to workers who are required to perform roof support removal.

The final rule also requires the installation of additional support where necessary to assure safe removal. For example, when one crossbar or a row of supports is being removed, one row of temporary supports is, in many mines, sufficient to prevent a roof fall from extending beyond the location where the supports are being removed. On the other hand, when multiple supports are being removed, two or more rows of supports may be necessary to control the roof. Likewise, where roof conditions are unstable, temporary supports may need to be closer together. This approach is consistent with MSHA experience in approving plans for removing permanent roof supports.

Paragraph (c)(2) requires a temporary support installed in accordance with § 75.213 to be installed as close as practicable to each roof bolt prior to its removal. This requirement is consistent with the application of the prior rule.

Paragraph (d) addresses the removal of temporary supports installed in accordance with § 75.213. It prohibits the removal of temporary supports, unless removal is done by persons who are in a remote location under permanently supported roof. In addition, two rows of temporary supports are required to be maintained between the

miners and the supports being removed. This provision is consistent with the prior rule, except that the prior rule provided for temporary supports to be placed on 4-foot centers. As discussed above, MSHA's experience with criteria applied in the overwhelming majority of roof control plans, has been that installation of temporary supports on a maximum of 5-foot centers has provided effective protection for miners during the removal of supports.

Paragraph (e) specifies that each entrance to an area where roof supports have been removed be posted with a readily visible warning, or a physical barrier installed to impede travel into the area. The prior rule provided for a barricade to be installed when recovery is completed or suspended for more than 3 days. The purpose of this standard is to provide a warning to persons approaching an area where the roof is hazardous. The Agency believes that this can be accomplished either by a visible warning or a physical barrier and will provide for an equivalent or greater amount of protection to miners as that provided by the prior rule.

Paragraph (f) outlines the conditions under which removal of permanent roof supports is prohibited. Removal would be prohibited where roof bolt torque or tension measurements or the condition of conventional roof supports indicate excessive loading, where roof fractures are present, where there is any other indication that the roof is structurally weak or where pillar recovery has been conducted. In these areas, any disturbance of the roof support may trigger a roof fall.

Several commenters were concerned that the standard would allow removal of supports in unsafe situations. However, this paragraph will prohibit support removal where adverse roof conditions exist. This paragraph incorporates all the prohibitions against roof support removal that existed under the prior criteria section and therefore does not reduce the protection afforded to miners by the prior standard.

Paragraph (g) recognizes an exception referred to in paragraph (f) which allows the removal of supports if the persons involved in such removal are in a remote location under supported roof and at least two rows of temporary supports are maintained across the opening between the miners and the unsupported area. For example, supports could be removed through the use of cables pulled from a safe distance. The removal of supports is sometimes necessary to induce roof falls thereby reducing roof pressures from over-riding into active workings.

This exception was not specifically recognized in the prior rule. However, in the context of the mine plan approval process, this practice has been permitted and proved to be an effective measure for the protection of miners. The flexibility that this exception allows will provide mining operations with a method to eliminate hazards that may be caused by excessive roof pressures when this can be done without exposure of miners to hazardous roof conditions.

Paragraph (h) specifies that the provisions of this section do not apply when removing conventional support for starting crosscuts and pillar splits or lifts. Removal of supports in these situations do not present the same hazards. In addition, these situations are addressed by 30 CFR 75.203(c) and are required to be addressed in the roof control plan. However, the standard does require that roof conditions be determined before the supports are removed.

II. Executive Order 12291 and the Regulatory Flexibility Act

This final rule addresses two provisions of MSHA's underground roof control standards which were promulgated on January 27, 1988. MSHA has determined that the rule will not result in major cost increases nor have an incremental effect of $100 million or more on the economy. The Agency also determined that the final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. Paperwork Reduction Act

There are no information collection requirements contained in this final rule.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground mining, Roof, face and rib support.

Dated: February 5, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Therefore, part 75 subchapter O, chapter I, title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Paragraphs (a) and (b) of § 75.204 are revised to read as follows:

§ 75.204 Roof bolting.

(a) For roof bolts and accessories addressed in ASTM F432–88, "Standard Specification for Roof and Rock Bolts and Accessories", the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–88; and

(2) Make this certification available to an authorized representative of the Secretary.

(b) Roof bolts and accessories not addressed in ASTM F432–88 may be used, provided that the use of such materials is approved by the District Manager based on—

(1) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(2) Tests which show the materials to be effective for supporting the roof in an area of the affected mine which has similar strata, opening dimensions and roof stresses as the area where the roof bolts are to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

* * * * *

3. Section 75.213 is revised to read as follows:

§ 75.213 Roof support removal.

(a) (1) All persons who perform the work of removing permanent roof supports shall be supervised by a management person experienced in removing roof supports.

(2) Only persons with at least one year of underground mining experience shall perform permanent roof support removal work.

(b) Prior to the removal of permanent roof supports, the person supervising roof support removal in accordance with paragraph (a)(1) of this section shall examine the roof conditions in the area where the supports are to be removed and designate each support to be removed.

(c) (1) Except as provided in paragraph (g) of this section, prior to the removal of permanent supports, a row of temporary supports on no more than 5-foot centers or equivalent support shall be installed across the opening within 4 feet of the supports being removed. Additional supports shall be installed where necessary to assure safe removal.

(2) Prior to the removal of roof bolts, temporary support shall be installed as close as practicable to each roof bolt being removed.

(d) Temporary supports installed in accordance with this section shall not be removed unless—

(1) Removal is done by persons who are in a remote location under supported roof; and

(2) At least two rows of temporary supports, set across the opening on no more than 5-foot centers, are maintained between the miners and the unsupported area.

(e) Each entrance to an area where supports have been removed shall be posted with a readily visible warning or a physical barrier shall be installed to impede travel into the area.

(f) Except as provided in paragraph (g) of this section, permanent support shall not be removed where—

(1) Roof bolt torque or tension measurements or the condition of conventional support indicate excessive loading;

(2) Roof fractures are present;

(3) There is any other indication that the roof is structurally weak; or

(4) Pillar recovery has been conducted.

(g) Permanent supports may be removed provided that:

(1) Removal is done by persons who are in a remote location under supported roof; and

(2) At least two rows of temporary supports, set across the opening on no more than 5-foot centers, are maintained between the miners and the unsupported area.

(h) The provisions of this section do not apply to removal of conventional supports for starting crosscuts and pillar splits or lifts except that prior to the removal of these supports an examination of the roof conditions shall be made.

[FR Doc. 90–2965 Filed 2–7–90; 8:45 am]

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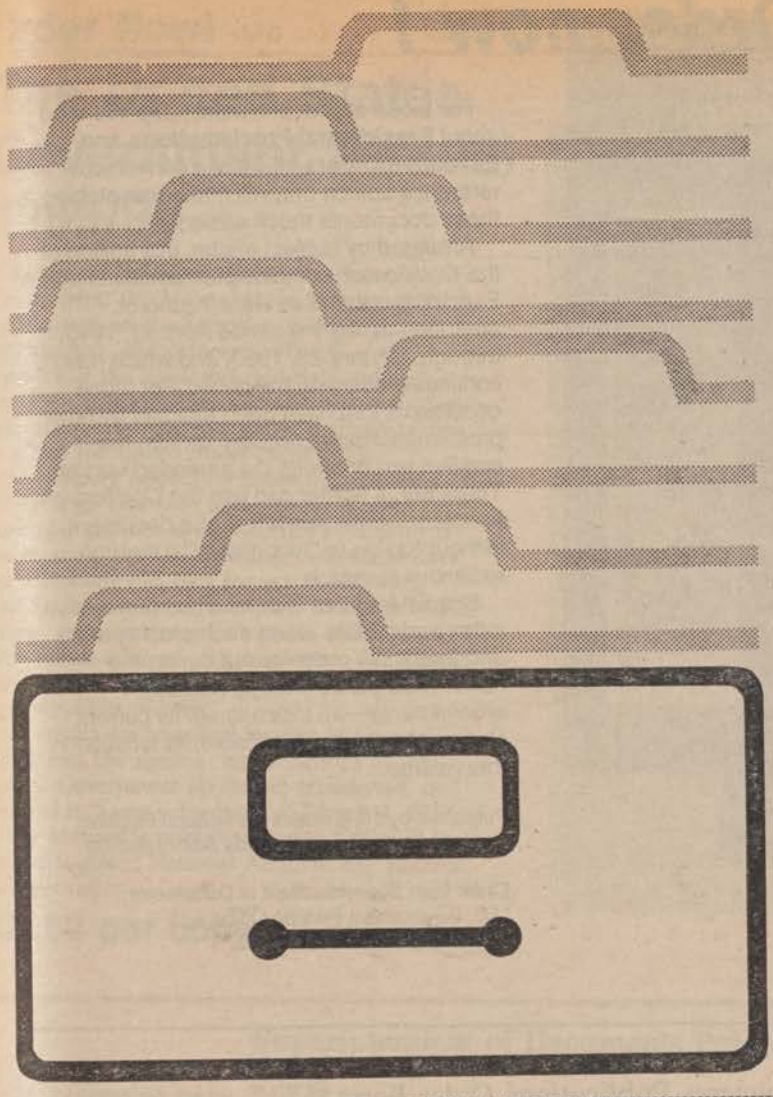
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in the Code of Federal Regulations (CFR)

Revised January 1, 1989

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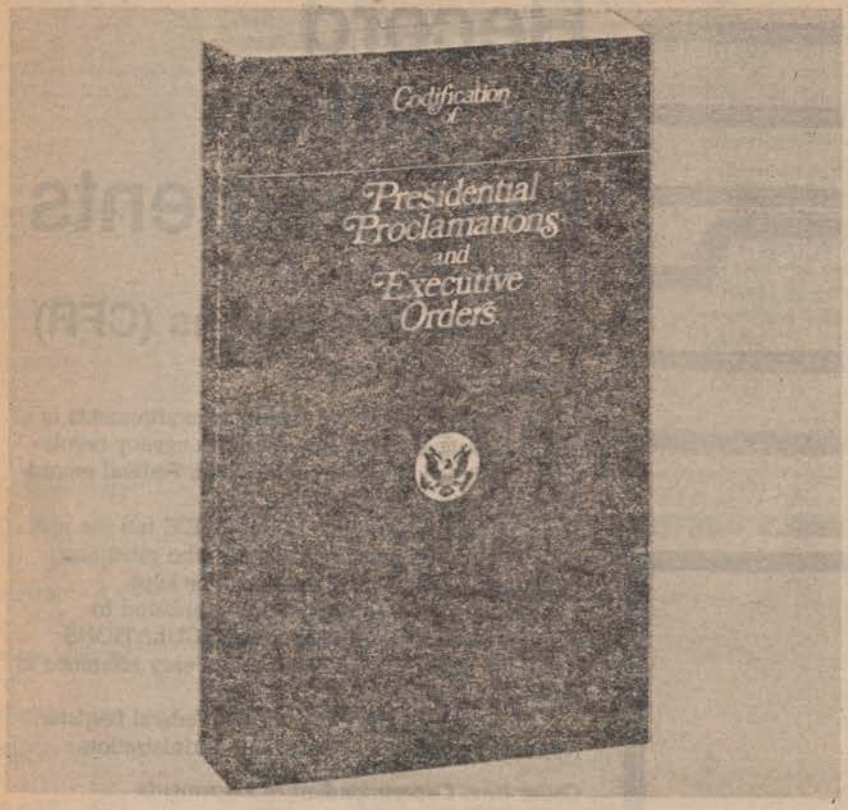
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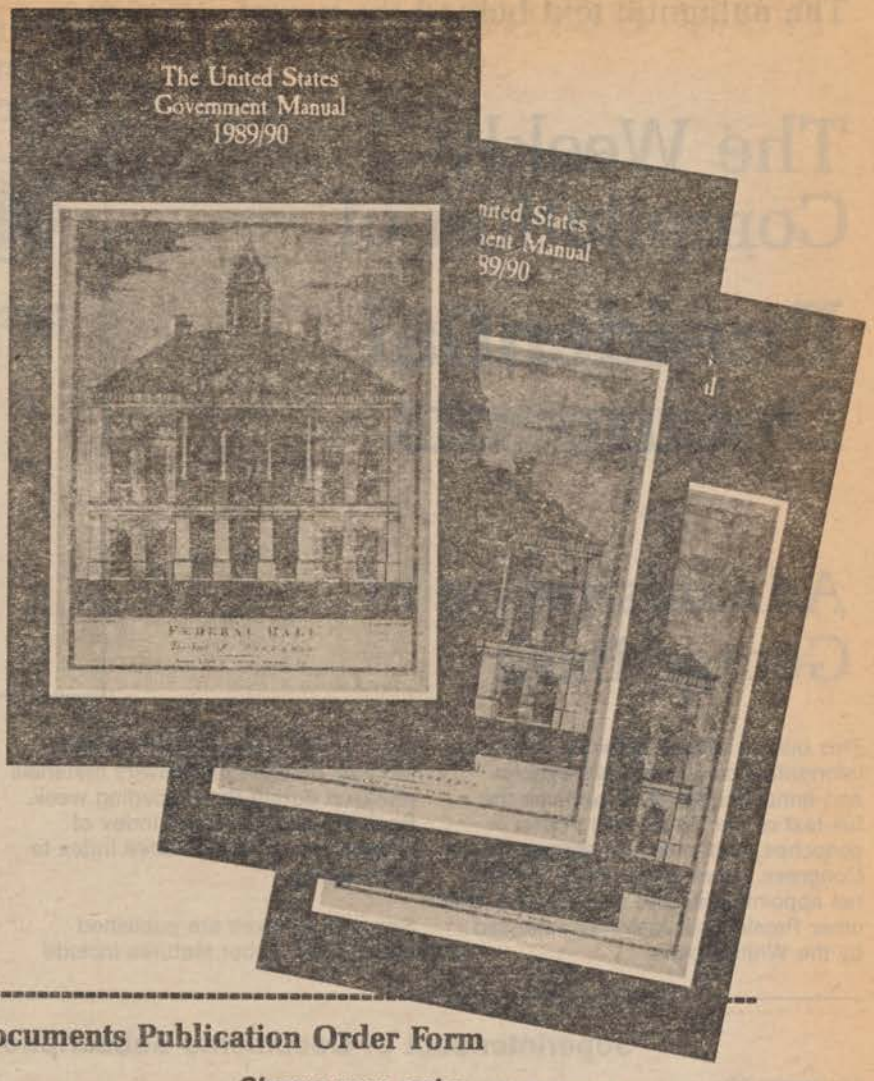
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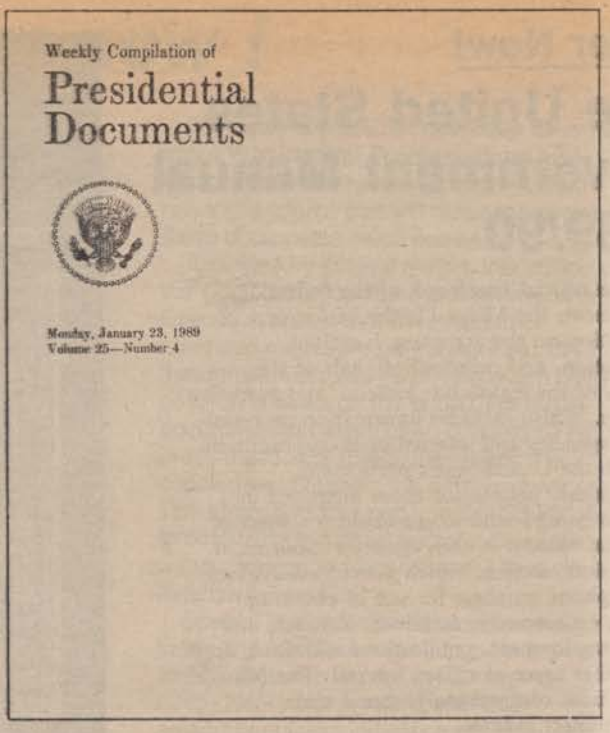
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